

**Request for Proposal – One Step Process
RFP 23-015**

Construction Manager-at-Risk

For

Zipp Family Sports Complex

Submittal Deadline: February 28, 2023
City of New Braunfels



City of New Braunfels Purchasing
550 Landa Street
New Braunfels, TX 78130
Phone: (830) 221-4389
newbraunfels.gov



SOLICITATION AND OFFER

City of New Braunfels
Purchasing
550 Landa Street
New Braunfels, Texas 78130

Solicitation Number: RFP 23-015
Construction Manager-at-Risk
Zipp Family Sports Fields Complex

Invitation for Bid (IFB)
 Request for Proposal (RFP)

Date Issued:
January 31, 2023

SOLICITATION

A non-mandatory Pre-Proposal Conference will be hosted remotely on February 14, 2023 at 10:00 PM (CST).

Questions may be submitted until close of business day on **February 17, 2023, 5:00 PM (CST)**.

Proposers must submit proposals in a signed original, with 1 hard copy, and 1 in digital format (.pdf File on USB Thumb Drive).

Proposals will be **received and read aloud** at the New Braunfels City Hall, City Secretary Office at the address shown above until:
3:00 P.M. (CST), February 28, 2023.

Proposals received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact: Barbara Coleman,
Purchasing Manager
(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)

Email: BColeman@nbtexas.org
Phone: (830) 221-4389
Fax: (830) 608-2112

5% Proposal Bond Required: YES NO
100% Payment Bond Required: YES NO
100% Performance Bond Required: YES NO

OFFER

(This portion must be fully completed by Proposer.)

In compliance with the solicitation documents, the undersigned in compliance with the Solicitation and Instructions to proposers and having examined the Project Manual, Drawings, Addenda and being familiar with the character of work included in these solicitation documents, proposes to furnish all pertinent labor, permits, machinery, tools, supplies and equipment necessary and to perform all work required to complete the Project for the unit prices for work in place for the items and quantities identified in the attached Solicitation Schedule.

The Owners reserves the right to reject any and all bids and may reject a bid if a bidder does not acknowledge receipt of all addenda issued by the Owners.

CONTRACT AWARD SHALL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.
SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT AND ALL REQUESTED COPIES SUBMITTED.

The Bidder's attention is directed to the fact that all applicable federal laws, state laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout and they will be deemed to be included in the contract the same as though herein written out in full.

Name and Address of Proposer:	Name and Title of Person Authorized to Sign Offer: E-Mail Address: Phone Number: Fax Number:
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Signature:	Date:
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Name, Address and Telephone Number of Person authorized to conduct negotiations on behalf of Proposer. (Applies to Request for Proposal only)	
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**REQUEST FOR PROPOSALS (RFP)
FOR MANAGER-AT-RISK SERVICES
FOR ZIPP FAMILY SPORTS COMPLEX**

The City of New Braunfels (the "City) is seeking a qualified firm to provide Construction Manager-at-Risk services. The firm must demonstrate they have the resources, experience, and qualifications necessary to provide Construction Manager-at-Risk services in connection with the construction of the Zipp Family Sports Complex. Responses are solicited for this service in accordance with the terms, conditions, and instructions set forth in this RFP and in accordance with the provisions of Texas Government Code Chapter 2269, Subchapter F.

The City will receive responses to this RFP at the office of the City Secretary, 550 Landa Street, New Braunfels, Texas 78130, **until 3:00p.m. on February 28, 2023**. Late responses will not be accepted. Each firm is responsible for insuring responses to this RFP are complete and have been delivered by date, time and location specified. Any proposal received after the date or time set for proposal opening will be returned unopened. If proposals are sent by mail, the Proposer shall be responsible for actual delivery of the proposal before the advertised date and hour for opening of proposals. If mail is delayed either in the postal service or in the internal mail system of the City of New Braunfels beyond the date and hour set for the opening, proposals thus delayed will not be considered and will be returned unopened.

The guidelines, as well as proposal documents may be obtained at:

- Purchasing staff at the New Braunfels City Hall
- the BidNet Direct website, <http://www.bidnetdirect.com/texas>
- the City of New Braunfels' website, <https://www.nbtexas.org/2694/Solicitations>

There will be a non-mandatory pre-proposal conference hosted virtually at **10:00 a.m. on February 14, 2023** at New Braunfels City Hall, 550 Landa Street, New Braunfels, TX 78130. The purpose of the meeting will be to discuss this solicitation and answer questions. Attendance is not mandatory but due to the complexity of the project, it is strongly recommended.

Receipt of responses does not bind the City to any contract for said services, nor does it give any guarantee that a contract for the Project will be awarded. Receipt of any Proposals shall be received and acknowledged only so as to avoid disclosure of the contents to competing offerors and kept strictly confidential during the negotiation/evaluation process. However, all documents shall be open for public inspection after a contract is awarded to the extent allowable under the Public Information Act.

**REQUEST FOR PROPOSALS (RFP)
FOR CONSTRUCTION MANAGER-AT-RISK SERVICES
FOR ZIPP FAMILY SPORTS COMPLEX**

SECTION 1 - GENERAL INFORMATION

1.1 PURPOSE OF RFP

1.1.1 The City invites the submittal of responses to this RFP from firms who can adequately demonstrate they have the resources, experience, and qualifications necessary to provide Construction Management-At-Risk (CMAR) services for construction of the Zipp Family Sports Complex (the “Project”).

1.1.2 The RFP provides the information necessary to prepare and submit Proposals including fee proposals and general conditions prices for evaluation and final ranking by the City. After evaluating the Proposals, respondents may be requested to attend an interview with the City to confirm their Proposals and answer additional questions. The City will then rank the proposals submitted by respondents in order to select the respondent offering the “best value” to the City.

1.1.3 The City is seeking a project team approach to construction management with a focus and commitment to achieving design and construction excellence. The CMAR will provide preconstruction services in cooperation with the Landscape Architect of record and its consultant the Engineer for the Project. Subsequently, the CMAR will negotiate a Guaranteed Maximum Price (GMP) for the construction phase of the work. A Construction Management at Risk project delivery method will expedite the Project to market and can also strengthen coordination between the Engineer and the CMAR. The collaborative effort between the City, the CMAR and the Engineer will create enhanced synergies throughout delivery of the Project. The successful CMAR will assemble a team that is experienced and technically proficient to work collaboratively with the City staff, other consultants, and stakeholders.

1.2 PROJECT DESCRIPTION AND LOCATION

The Project consists of phase 1 of a new sports complex, located at the intersection of Klein Rd & FM 1044, will span over 150 acres and include: four (4) soccer fields, four (4) baseball fields, (4) softball fields, concessions, restrooms, shading, parking, and infrastructure improvements.

The project has been designed to 90% plans and specifications.

1.2.1 Estimated Construction Budget:

The total budget for the Project is estimated at \$29,000,000.00, which includes all project costs, including costs of construction.

1.2.2 Project Design Team

- Landscape Architect – Norris Design
2201 E. Sixth St. Austin, Texas
- Engineer – Walker Partners, consultant of Norris Design

1.3 OTHER BACKGROUND INFORMATION

The City of New Braunfels is working with Green Valley Special Utility District (GVSUD) to develop a reclaimed water project in order to provide for the irrigation needs of the Project. The selected CMAR may be asked to assist the City in coordination of onsite improvements with GVSUD and will be required to coordinate schedules and work activities with the GVSUD improvements.

1.4 AVAILABLE DOCUMENTS

1.4.1 Proposals are due February **28, 2023 at 3:00 p.m.** to City Hall, City Secretary Office: Attention: Purchasing at 550 Landa Street, New Braunfels, Texas 78130. Proposal documents may be obtained at:

- the Purchasing Office from the Purchasing Manager
- the BidNet Direct website, <http://www.bidnetdirect.com/texas>
- the City of New Braunfels' website, <https://www.nbtexas.org/2694/Solicitations>

1.5 SELECTION PROCESS SCHEDULE

DATE	MILESTONE
January 31, 2023	RFP issued on City of New Braunfels Website: https://www.nbtexas.org/2694/Solicitations and Bidnet Direct: https://www.bidnetdirect.com/texas/city-of-new-braunfels
February 14, 2023	Pre-Proposal Conference at City Hall
February 17, 2023	Deadline for questions and request for clarification
February 28, 2018	Proposal submission deadline
April 2023	City Council considers award of contract

1.6 ISSUING OFFICE AND CONTACT FOR QUESTIONS

1.6.1 Questions relating to definitions, interpretations or requests for clarification must be in writing, on or before **February 17, 2023 at 5:00 p.m.**, directed to:

City of New Braunfels, Purchasing Office
Barbara Coleman, Purchasing Manager
550 Landa St / New Braunfels, TX 78130
830-221-4389 / BColeman@newbraunfels.gov

1.7 PROCEDURE

1.7.1 SELECTION PROCESS – ONE STEP PROCESS

The City is soliciting a CMAR using the one-step process in accordance with Texas Government Code Chapter 2269, Subchapter F. The City intends to award the Construction Manager-at-Risk Services contract to the firm that best demonstrates commitment, experience, available resources and innovative methods to address the construction requirements as well as the cost and schedule objectives established by the City as follows:

- 1.7.1.1 The RFP provides the information necessary to prepare and submit Proposals including fee proposals and general conditions prices. The selection process for this RFP is a one-step process as described in Section 2269.253 of the Texas Government Code.
- 1.7.1.2 The City shall receive, publicly open, and read aloud the names of the offerors. The City shall also read aloud the fees and prices stated in each proposal as the proposal is opened. After the date of opening the proposals, the City's selection committee shall evaluate and rank each proposal submitted in relation to the criteria set forth in this RFP.
- 1.7.1.3 The City shall select the offeror that submits the proposal that offers the best value for the City based on the published selection criteria and on its ranking evaluation. The City shall first attempt to negotiate a contract with the selected offeror. If the City is unable to negotiate a satisfactory contract with the selected offeror, the City shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

1.8 EVALUATION CRITERIA AND SCORING

- 1.8.1 The following criteria will be used in the evaluation and ranking of the proposals.
- 1.8.2 Respondents meeting the Minimum Qualifications (Pass/Fail Criteria) of this RFP shall be evaluated as follows:

EVALUATION CRITERIA		Score
Proposers who do not pass 1 & 2 will be disqualified.		
1	Completeness of Response	Pass/Fail
2	General Company History & Financial Capabilities	Pass/Fail
3	Pricing and Delivery Proposal	30
4	Qualifications	15
5	Pre-Construction Phase Services and Project Execution Plan	15
6	Construction Phase Services and Project Execution Plan	15
7	Project Planning and Scheduling	10
8	Estimating and Cost Control Measures	10

9	Quality Control and Commissioning Program	5
TOTAL SCORE		100

Respondents shall carefully read the information contained in the following criteria and submit a complete response to all questions in Section 1.8 formatted as directed in this RFP.

1.8.3 Criterion 1 - Completeness of Response

1.8.3.1 Provide complete and thorough responses to all questions in the RFP. Incomplete responses will be considered non-responsive.

1.8.4 Criterion 2 - General Company History & Financial Capabilities

1.8.4.1 Provide the following information on your firm for the past **five** (5) fiscal years:

Volume of Contracts

- Annual number, value and percent change of contracts in Texas per year;
- Annual number, value and percent change of contracts nationally per year;

Revenues

- Annual revenue totals and percent change per year;

Bonding

- Total bonding capacity;
- Available bonding capacity and current backlog.

1.8.4.2 Attach a letter of intent from a surety company indicating your firm's ability to bond for the entire construction cost of the Project. The surety shall acknowledge that the firm may be bonded for each stage/phase of the Project, with a potential maximum construction cost of \$29,000,000. Bonding requirements are set forth in the Standard Form of Agreement and the General Conditions of the Contract.

1.8.4.3 Identify if your firm is currently for sale or involved in any transaction to expand or to become acquired by another business entity? If so, please explain the impact both in organization and company direction.

1.8.4.4 Provide details of any past or pending litigation, or claims filed, against your firm that may affect your performance under a Contract with the Owner.

1.8.4.5 Identify if your firm is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, specify date(s), details, circumstances, and prospects for resolution.

1.8.4.6 Does any relationship exist by relative, business associate, capital funding agreement, or any other such kinship between your firm and any Owner employee or officer? If so, please explain.

1.8.5 Criterion 3 - Pricing and Delivery Proposal

1.8.5.1 Complete attached Pricing and Delivery Proposal Form.

1.8.6 Criterion 4 – Qualifications

- 1.8.6.1 Provide a statement of interest for the Project including a narrative describing the respondent's unique qualifications as they pertain to this particular Project.
- 1.8.6.2 Provide a statement on the availability and commitment of the respondent, its principal(s) and assigned professionals to undertake the Project.
- 1.8.6.3 Describe your management philosophy for the Construction Manager-at-Risk delivery method.
- 1.8.6.4 Provide resumes of the Construction Manager-at-Risk team that will be directly involved in the Project, including their experience with similar projects, the number of years with the firm, and their city(s) of residence.
- 1.8.6.5 Describe, in graphic and written form, the proposed Project assignments and lines of authority and communication for each team member to be directly involved in the Project. Indicate the estimated percent of time each team members will be involved in the Project for Pre-construction and Construction Services.
- 1.8.6.6 Identify and describe the proposed Team's past experience for providing CMAR services that are MOST RELATED TO THIS PROJECT within the last five (5) years. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each project listed:
 - Project name, owner, location, contract delivery method, and description
 - Color images (photographic or machine reproductions)
 - Final construction cost
 - Final project size in gross square feet
 - Type of construction (new, renovation, or expansion)
 - Actual Notice to Proceed for Pre-Construction Services date
 - Actual Notice to Proceed, Substantial Completion, and Final Payment dates for Construction Services
 - Name of Project Manager (individual responsible to the Owner for the overall success of the project)
 - Name of Project Superintendent (individual responsible for coordinating the day to day work)
 - Names of Mechanical, Plumbing and Electrical subcontractors
 - Identify proposed team members for this Project who worked on the project
- 1.8.6.7 References (for each project listed above, identify the following):
 - The owner's name and representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number
 - Architect/Engineer's name and representative who served as the day-to-day liaison during the construction phase of the project, including telephone number.
 - Length of business relationship with the reference.

References shall be considered relevant based on specific project participation and experience with the Respondent. The Owner may contact listed references during any part of this process, and the Owner reserves the right to contact any other references at any time during the RFP process.

1.8.6.8 Identify a maximum of three (3) completed projects, of any type, for which your firm has received an award for construction excellence from a recognized organization and provide descriptive information for each.

1.8.7 Criterion 5 - Pre-construction Phase Services and Project Execution Plan

1.8.7.1 Describe your Construction Management and Execution plan for providing Pre-construction Phase Services required for this Project.

1.8.7.2 Describe what you perceive are the critical Pre-Construction issues for this Project.

1.8.7.3 Describe your procedures, objectives and personnel responsible for reviewing design and construction documents and for providing feedback regarding cost, schedule and constructability to the Architect/Engineer and the Owner on this Project.

1.8.7.4 Describe what value engineering methods you plan to use for the Project to attempt to reduce costs.

1.8.7.5 Describe your understanding of the administrative and cost challenges and opportunities associated with providing Pre-construction and Construction services for the City on this project, and your strategy for resolving these issues.

1.8.7.6 Describe your Bid/Proposal Package Strategy for procuring Cost of the Work from subcontractors, vendors, suppliers, etc.

1.8.7.7 Describe your Constructability Program for this Project and how it will be implemented.

1.8.7.8 Provide examples of records, reports, monitoring systems, and information management systems you will use on this Project during Pre-construction Services.

1.8.7.9 Provide examples of Pre-construction services provided that creatively incorporated sitework, excavation, mechanical, electrical, and plumbing solutions in similar projects.

1.8.8 Criterion 6 - Construction Phase Services and Project Execution Plan

1.8.8.1 Describe your Construction Management and Execution plan for providing Construction Phase Services required for this Project.

1.8.8.2 Describe what you perceive are the critical Construction issues for this Project.

1.8.8.3 Describe your ability and desire to self-perform work on this Project, and the method for determining yourself as the "best value" through a competitive proposal process.

1.8.8.4 Provide examples of records, reports, monitoring systems, and information management systems you will use on this Project during Construction Services.

1.8.8.5 Describe your approach to containing storm water run-off and meeting the regulatory requirements of the Texas Commission on Environmental Quality's

(TCEQ) Texas Pollutant Discharge Elimination System (TPDES) and a Storm Water Pollution Prevention Plan for this Project.

- 1.8.8.6 Describe your approach to coordinating inspections and approvals with the Texas Department of Licensing and Regulation regarding Texas Accessibility Standards.
- 1.8.8.7 Describe your approach to coordinating inspections and approvals with the Fire Marshal regarding approval of life safety systems.

1.8.9 Criterion 7 - Project Planning and Scheduling

- 1.8.9.1 Provide resumes, indicating the scheduling experience of all personnel responsible for establishing and updating the project schedule, and their city(s) of residence for this Project.
- 1.8.9.2 Describe your plan for meeting or improving the Owner's proposed schedule for design and construction. If you propose to improve the schedule, describe the impact on quality of services, materials or workmanship that may occur.
- 1.8.9.3 Describe how you will develop, maintain and update the project schedule during design and construction.
- 1.8.9.4 Describe your approach to assuring timely completion of this Project, including methods for schedule recovery, if necessary. From any three (3) of the projects listed in response to Criterion 4, provide examples of how these techniques were used, including specific scheduling challenges/requirements and actual solutions.
- 1.8.9.5 Describe how you develop and maintain work schedules during design and construction to coordinate with the Owner's project schedule. From any three (3) projects listed in response to Criterion 4, provide examples of how these techniques were used.
- 1.8.9.6 Describe your experience utilizing Primavera, Microsoft Schedule, or similar software for scheduling. From any of three (3) of the projects listed in response to Criterion 4, provide a sample of the monthly schedule reports, including identified milestones and schedule recovery plans.

1.8.10 Criterion 8 - Estimating and Cost Control Measures

- 1.8.10.1 Identify the proposed cost control team for Pre-Construction and Construction Services, their duties, city(s) of residence, estimating system, and GMP cost control system for this Project.
- 1.8.10.2 Describe your project estimating system for developing the GMP Proposal and how you will monitor and track these costs during the procurement and payment process.
- 1.8.10.3 Describe how the cost control team will ensure the executed GMP Proposal will be within the Owner's budget on this Project.
- 1.8.10.4 Describe your plan and approach to address volatility and/or escalation of

material pricing during the duration of the Project to achieve completion within the GMP.

- 1.8.10.5 Identify a maximum of five (5) projects listed in Criterion 4 with GMP contracts and the amount of savings returned to the Owner. For these projects, describe your cost estimating methods, describe how the estimates were developed, how often they were updated and the degree of accuracy achieved.
- 1.8.10.6 Describe your fiduciary responsibility as a Construction Manager-at-Risk using GMP contracts for publicly funded projects.
- 1.8.10.7 Describe your cost control methods during construction and how you procure subcontracts, confirm scope, amount, and ensure proper payment. From any three (3) projects listed in response to Criterion 4, provide examples of how these techniques were used and the degree of accuracy achieved.
- 1.8.10.8 Describe your methodology for working with the Project Architect/Engineer and their consultants to deliver a GMP and to maintain the GMP throughout the design and construction process.
- 1.8.10.9 Provide a sample of a cost estimate used to establish a contract amount from any project listed in Criterion 4.
- 1.8.10.10 Describe 1) Your process for ensuring that the Design Documents provide the information necessary to arrive at a complete GMP, including all Owner requirements with reasonable contingencies, and 2) Your process for subsequently ensuring that the 100% Construction Documents align with the project scope in the GMP proposal documents.

1.8.11 Criterion 9 - Quality Control and Commissioning Program

- 1.8.11.1 Identify the quality control and commissioning team, their duties, city(s) of residence and their objectives for this Project.
- 1.8.11.2 Describe how your quality control team will measure the quality of construction and commissioning performed by trade contractors on this Project, and how will you address non-conforming work.
- 1.8.11.3 Describe your implementation of a quality control process for this Project during the Design Development stage though completion of Construction Documents stage.
- 1.8.11.4 Describe your quality assurance program. Explain the methods used to ensure quality control during the Construction phase of a project. Provide specific examples of how these techniques or procedures were used from three (3) projects listed in response to Criterion 4.
- 1.8.11.5 Describe your procedures for implementing industry's "best practices" as defined by the Construction Industry Institute and similar organizations for:
 - Establishing and tracking project objectives

- Using project scope definition resources (i.e. Project Definitions Rating Index (PDRI)) in order to obtain complete and accurate design and construction documents from the Architect/Engineer
- Partnering
- Cost tracking
- Change (order) management systems
- Total quality management for each phase, including close-out and commissioning.

1.8.11.6 Provide an example of a successful constructability program used to maintain project budgets without sacrificing quality.

1.8.12 Interview

1.8.12.1 After the proposals have been initially ranked based solely upon the selection criteria above, the City, in its sole discretion, may conduct oral interviews of respondents. The number of respondents invited to interview will depend on the scores following evaluation of the written proposal responses. Only the highest ranked Respondents will be invited for interviews. If the City chooses to conduct interviews, selected Proposers will be notified of the time and place for the interview; the interview format and agenda; and individuals from the firm expected to participate in the interview as a minimum standard. Failure to participate in the interview, if requested, may result in disqualification of the proposal. Respondents selected for interview will be scored based on the interview for a maximum score of 10 points. The interview points will be added to the initial proposal score for final total score, on which the final rankings will be based. The City reserves its right to reevaluate or rescore any submission post-interview based on information learned during the interview process that is materially different than the Proposer's original submission.

1.9 SCOPE OF SERVICES

1.9.1 Pre-construction Services:

The selected CMAR will serve as an integral team member during the design process and throughout the construction process. The selected CMAR will be required to perform the basic construction management services for the Project. Furthermore, the CMAR will be used, in conjunction with the design team, as the cost estimator and project scheduler. The CMAR will coordinate and cooperate with the City and Engineer. The CMAR will generally serve as a technical resource to the City throughout the Project. The selected firm will assist City by providing pre-construction services, including but not limited to the following:

- 1.9.1.1 Design document review and coordination of modifications with the Engineer, if needed.
- 1.9.1.2 Value engineering, including analyzing plans for potential cost reductions and phasing of work options.
- 1.9.1.3 Budget and cost consulting:
 - Prepare and submit a constructability and scope review of the Construction Documents.

- Develop an opinion of cost with a detailed line-item break-out estimate.
- Prepare and present to the City the Guaranteed Maximum Price (GMP) based on the completed Construction Documents.
- Work with Engineer and the City provide comments relating to constructability and areas of potential cost savings. This shall be provided in the form of a Value Engineering Management log.
- Meet with Engineer and the City during the evaluation of the construction documents. Provide individual pricing options as directed by team.
- Provide summary of opinion of costs prior to bidding.

1.9.1.4 Schedule of all project construction related activities. Develop a Critical Path Project schedule for each phase from construction start.

1.9.1.5 Review construction documents and make recommendations to the City and Engineer.

1.9.1.6 Make recommendations to the City and Engineer, regarding division of work in order to facilitate competitive bidding and awarding of subcontracts.

1.9.1.7 Prepare pre-qualification criteria for material suppliers and trade contractors and develop trade contractor, subcontractor, and supplier interest in the Project.

1.9.1.8 Prepare trade contractor and subcontractor bid or proposal packages.

1.9.1.9 Conduct trade contractor and subcontractor pre-bid meetings.

1.9.1.10 Receive trade contractor and subcontractor bids.

1.9.1.11 Expedite opportunities for local participation by material suppliers, trade contractors, and subcontractors in this project.

1.9.1.12 Review competitive sealed bids from the various contractors and make recommendations to the City.

The CMAR shall publicly advertise, as prescribed for the City under Texas law, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. The CMAR may seek to perform portions of the work itself if the CMAR submits its bid or proposal for those portions of the work in manner described in the Construction Documents.

The CMAR and the City or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the CMAR,

Engineer, or the City. All bids or proposals shall be made public not later than the seventh day after the award of the contract.

1.9.2 Construction Services:

The selected firm will provide CMAR services during the construction phase, including but not limited to the following:

- 1.9.2.1 Prepare, execute and manage contracts with trade contractors, subcontractors, and suppliers.
- 1.9.2.2 Regulatory compliance, permits, documentations and submittals.
- 1.9.2.3 Development of project specific quality control plan for construction activities.
- 1.9.2.4 Obtain approvals of public agencies and approval authorities.
- 1.9.2.5 Coordinate and direct the work of the trade contractors and subcontractors.
- 1.9.2.6 Conduct a general pre-construction and in-depth pre-construction meeting with all major trade contractors and subcontractors prior to the start of their work activities.
- 1.9.2.7 Provide temporary job site facilities and services.
- 1.9.2.8 Provide site security and control site access.
- 1.9.2.9 Track construction costs and maintain detailed construction cost records.
- 1.9.2.10 Review and process shop drawings and other submittals.
- 1.9.2.11 Establish, monitor, and update a construction scheduling system.
- 1.9.2.12 Maintain and provide as-built information to Engineer for preparation of record drawings.
- 1.9.2.13 Review requests for changes, challenge the cost of the Contractors as necessary, and make recommendations to the City and Engineer.
- 1.9.2.14 Review and process all pay request applications by the trade contractors and subcontractors.
- 1.9.2.15 Develop and monitor a comprehensive safety program for the Project.
- 1.9.2.16 Conduct progress and coordination meetings with on-site trade foremen or superintendents.
- 1.9.2.17 Conduct meetings with the City's representative and Engineer to review construction progress, scheduling, conflict resolution, and other matters.
- 1.9.2.18 Supervise, direct and manage the complete construction of the Project.

- 1.9.2.19 Obtain governing authorities required permits and approvals.
- 1.9.2.20 Establish and maintain Quality Control and Quality Assurance standards.
- 1.9.2.21 Provide record keeping and ensure proper reporting required by the City.
- 1.9.2.22 Develop and provide monthly written progress reports.
- 1.9.2.23 Provide change order and contingency funds control.
- 1.9.2.24 Maintain and update project schedule every two weeks.
- 1.9.2.25 Provide jobsite safety and security as required.
- 1.9.2.26 Other services as required by the Contract Documents.

1.10 OBJECTIVES

1.10.1 The intent of this solicitation is to obtain the professional services of a firm with demonstrated relevant experience with CMAR projects. The objectives of the project may include, yet may not necessarily be limited to, providing management direction over the construction of the listed project so that the resulting facilities will be:

- 1.10.1.1 Constructed in such a way that the City will have a high value facility, well-constructed of quality materials and workmanship;
- 1.10.1.2 Constructed in such a manner that it can and will be completed within the established budget;
- 1.10.1.3 Constructed in such a way that it can and will be completed in accordance with the approved schedule;
- 1.10.1.4 Constructed in such a way that it will be highly functional, responding to all of the services outlined in the established criteria.

1.11 PROJECT DURATION

1.11.1 It is anticipated that the Notice to Proceed for the preconstruction phase of the project will be issued in MARCH 2023. It is anticipated that the Notice to Proceed for the construction phase of the project will be issued in SEPTEMBER 2023. The project is estimated to be substantially completed within 455 calendar days after the Notice to Proceed is issued.

1.12 ADDITIONAL INSTRUCTIONS, NOTIFICATIONS, AND INFORMATION

1.12.1 No Gratuities – Respondents shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City for the purpose of influencing this selection. Any attempt by the Respondent to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.

- 1.12.2 All Information True** - Respondent represents and warrants to the City that all information provided in the response shall be true, correct and complete. Respondents who provide false, misleading, or incomplete information, whether intentional or not, in any of the documents presented to the City for consideration in the selection process shall be excluded.
- 1.12.3 Interviews** - After the initial evaluation of the statements of qualification, Respondents will be notified via phone, fax, email, or letter by mail of their status in the selection process. Respondents who are 'short-listed" should expect and anticipate subsequent interviews which will most likely focus not only on the Respondent's program approach but also on an appraisal of the people who would be directly involved in the Project.
- 1.12.4 Inquiries** - Do not contact the City or the Project team during the selection process to make inquiries about the progress of this selection process. Respondents will be contacted when it is appropriate to do so.
- 1.12.5 Cost of Responses** - The City will not be responsible for the costs incurred by anyone in the submittal of responses.
- 1.12.6 Contract Negotiations** - This RFP is not to be construed as a contract or as a commitment of any kind. If this RFP results in a contract offer by the City the specific scope of work, associated fees, and other contractual matters will be determined during contract negotiations. To ensure that the appropriate staff is assigned to the Project, the City intends to make the inclusion of a 'key persons" clause a part of the contract negotiations.
- 1.12.7 No Obligation** - The City reserves the sole right to (1) evaluate the responses submitted; (2) waive any irregularities therein; (3) select candidates for the submittal of more detailed or alternate proposals; (4) accept any submittal or portion of submittal; (5) reject any or all Respondents submitting responses, should it be deemed in the City's best interest; or (6) cancel the entire process.
- 1.12.8 Prevailing Wage Rate** - Respondents are advised that the Texas Prevailing Wage Law will be administered in accordance with the procedures set forth in the Contract Documents and as required by Chapter 2258 of the Texas Government Code. The penalty for violation of prevailing wage rates has been increased from \$10.00 per underpaid worker per day or portion thereof to \$60.00.
- 1.12.9 Historically Underutilized Businesses' Submittal Requirements** - It is the policy of the City of New Braunfels to encourage the use of Historically Underutilized Businesses (HUBs) in its prime contracts, subcontractors, and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in contracting and purchasing. Each respondent is required to conduct HUB outreach and recruitment efforts during construction.
- 1.12.10 DELINQUENCY IN PAYING CHILD SUPPORT** - Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

1.12.11 Owner and Construction Manager-At-Risk Agreement – The selected Construction Manager at Risk will be required to provide a completed Standard Form of Agreement between the Owner and the CMAR to be provided upon award by City Council. The City reserves the right to make changes and deletions to the Standard Form of Agreement. A sample shall be attached behind Divider #7.

1.12.12 Construction Manager-at-Risk General Conditions – The selected Construction Manager at Risk will be required to use the General Conditions of the Contract, as amended. The City reserves the right to make changes and deletion to the General Conditions. To be attached behind Divider #8.

1.13 ADDITIONAL CONDITIONS – Liquidated damages, if any, will be set forth the Contract Documents.

1.14 PRE-PROPOSAL CONFERENCE

1.14.1 A Pre-Proposal Conference will be hosted virtually at **10:00 a.m. (CST) on February 14, 2023**. Remote access via Zoom instructions are:

Register in advance for this webinar:

https://us02web.zoom.us/webinar/register/WN_n_2xwqogTWyjJBlh5JoWWQ

After registering, you will receive a confirmation email containing information about joining the webinar. The call in Telephone: (833) 926-2300

Attendance is not mandatory but due to the complexity of the project, it is strongly recommended. Proposers are encouraged to attend and participate in the conference. The City will transmit to all prospective Proposers of record such Addenda as the City considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

Pre-Proposal conference minutes and any addendum may be downloaded at The BidNet Direct website <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and the City of New Braunfels' website, <https://www.nbtexas.org/2694/Solicitations>.

1.15 SUBMITTAL INSTRUCTIONS

1.15.1 Sealed submittals are required. Submittals shall be delivered to the office of February 28, 2023. Bid may be mailed or delivered (in person or by Express Mail or delivery service) to:

City of New Braunfels
Attn: Purchasing Office
550 Landa Street
New Braunfels, TX 78130

All submittals must be labeled on the outside with the Respondent's name and the name of the Project. Late submittals will not be considered.

1.15.2 One (1) original, five (5) copies and one (1) electronic copy on USB of the response are to be addressed to:

The outside of the envelope or container must state:

RFP 23-015

Project Name: CMAR – Zipp Family Sports Complex

February 28, 2023 at 3:00 P.M.

1.15.2.1 To enable the City to efficiently evaluate the responses, it is **IMPORTANT** that respondents follow the required format in preparing their responses. **RESPONSES THAT DO NOT CONFORM TO THE PRESCRIBED FORMAT MAY NOT BE EVALUATED.**

1.16 FORMAT OF SUBMITTAL

1.16.1 General Instructions

1.16.1.1 Proposals shall be prepared **SIMPLY AND ECONOMICALLY**, providing a straightforward, **CONCISE** description of the respondent's ability to meet the requirements of this RFP. Emphasis shall be on the **QUALITY**, completeness, clarity of content, responsiveness to the requirements, and an understanding of Owner's needs.

1.16.1.2 Each response shall be submitted as outlined in this section. Please include an outside cover and first page, containing the name of the Project (**"Request for Proposals (RFP) for Construction Manager-at-Risk Services for Zipp Family Sports Complex"**), the name of the Respondent, and the submittal date.

1.16.1.3 Proposals shall be a **MAXIMUM OF FIFTY (50) PRINTED PAGES**. The cover, table of contents, divider sheets, Pricing and Delivery Proposal, and Execution of Offer do not count as printed pages.

1.16.1.4 Respondents shall carefully read the information contained in this RFP and submit a complete response to all requirements and questions as directed. Incomplete Proposals will be considered non-responsive and subject to rejection.

1.16.1.5 Proposals and any other information submitted by respondents in response to this RFP shall become the property of the Owner.

1.16.1.6 Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to rejection by the Owner, at its option.

1.16.1.7 The Owner makes no representations of any kind that an award will be made as a result of this RFP. The Owner reserves the right to accept or reject any or all Proposals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFP when deemed to be in Owner's best interest.

1.16.1.8 Proposals shall consist of answers to questions identified in the RFP. It is not necessary to repeat the question in the Proposals; however, it is essential to reference the question number with the corresponding answer.

1.16.1.9 Failure to comply with all requirements contained in this Request for Proposals may result in the rejection of the Proposals.

1.16.2 Page Size, Binding, Dividers and Tabs

1.16.2.1 Proposals shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings or staples. DO NOT USE METAL-RING HARD COVER BINDERS. Each copy of the response shall be bound using a semi-permanent binding method, to ensure that pages are not lost.

1.16.2.2 Additional attachments shall NOT be included with the Proposals. Only the responses provided by the Respondent to the questions identified in Section 3 of this RFP will be used by the Owner for evaluation.

1.16.2.3 Separate and identify each criteria response to this RFP by use of a divider sheet with an integral tab for ready reference.

1.16.3 Table of Contents - Submittals shall include a "Table of Contents" and give page numbers for each part the Proposal.

1.16.4 Pagination - Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.).

1.16.5 Other Documentation

1.16.5.1 Bid Bond – five percent of price proposal

1.16.5.2 One copy of Certificate of Insurance completed and signed

1.16.5.3 Conflict of Interest Form

1.16.5.4 Certificate of Interested Parties (Form 1295)

END OF SECTION

SECTION 2 - PROPOSAL CONDITIONS

2.01 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

2.01.1 It is the responsibility of each Proposer before submitting a Proposal, to: (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Proposer's observations with the Contract Documents; and (e) notify the City of all conflicts, errors or discrepancies in the Contract Documents.

2.01.2 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others and the City does not assume responsibility for the accuracy of completeness thereof unless it is expressly provided otherwise in the Contract Documents.

2.01.3 On written request in advance, the City will provide each Proposer access to the site to conduct such explorations and tests as each Proposer deems necessary for submission of a Proposal. Proposer shall fill all holes, clean up, and restore the site to its former condition upon completion of such explorations. The Proposer shall be responsible for the expenses associated with such tests and explorations.

2.01.4 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by the City unless otherwise provided in the Contract Documents.

2.01.5 The submission of a Proposal will constitute an incontrovertible representation by Proposer that Proposer has complied with every requirement of this solicitation, that without exception the Proposal is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

2.02 FIRM OR INDIVIDUAL'S OBLIGATION REGARDING EVALUATION

2.02.1 Submission of Information. Submitters are cautioned that it is each firm and or individual's sole responsibility to submit information related to the evaluation categories, and the City is under no obligation to solicit such information if it is not included with the response. Failure of a firm or individual to submit such information may cause an adverse impact on the evaluation of the specific response.

2.02.2 Submitter Review of RFP. Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFP and their responses. Failure to do so will be at the firm or individual's risk and will not be a determinative factor when awarding the contract for services.

2.03 ORAL NON-BINDING

2.03.1 Any non-written representations, explanations, or instructions given by City staff or City agents are not binding and do not form a part of, or alter in any way, the RFP, a written agreement pertinent to the RFP, or the awarding of the contract.

2.04 AUTHORIZED SIGNATURE

2.04.1 A proposal must be manually signed by a person having authority to contractually bind the submitter. Any erasures or other changes must be initialed by the person authorized to sign the proposal or others who are able to show evidence of authority to execute or sign on behalf of the submitter.

2.05 INTERPRETATIONS AND ADDENDA

2.05.1 All questions about the meaning or intent of the Contract Documents are to be directed to Purchasing Manager. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda emailed, mailed or delivered to all parties recorded by Purchasing Manager as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

2.06 MODIFICATION AND WITHDRAWAL OF PROPOSALS

2.06.1 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals.

2.06.2 If, within twenty-four hours after Proposals are opened, and Proposer files a duly signed, written notice with the City and promptly thereafter demonstrates to the reasonable satisfaction of the City that there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal and the Proposal security will be returned. Thereafter, that Proposer will be disqualified from further proposal on the work to be provided under the Contract Documents.

2.07 OPENING OF PROPOSALS

2.07.1 Proposals will be opened, and the base price will be read aloud. Other content will not be disclosed to competing Proposers and the contents will be kept confidential during negotiations. Until the negotiations are completed and the contract is awarded, information will be disclosed to the public as required by the Public Information Act.

2.08 PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

2.08.1 All Proposals will remain subject to acceptance for ninety (90) days after the day of the Proposal opening, but the City may, in its sole discretion, release any Proposal and return the Proposal security prior to that date.

2.09 AWARD OF CONTRACT

2.09.1 With recommendation by the evaluation committee the award of this contract will be provided by the City of New Braunfels City Council. The City reserves the right to reject any and all Proposals, to waive any and all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Proposer, and

the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Proposals. Also, the City reserves the right to reject the Proposal of any Proposer if the City believes that it would not be in the best interest of the City to make an award to that Proposer, whether because the Proposal is not responsive or the Proposer is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the City. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

2.09.2 The City will rank the Respondents in the order that they provided the "best value" for the City based on the published selection criteria and on the ranking evaluations. In evaluating Proposals, the City will consider the qualifications of the Proposers, whether or not the Proposals comply with the prescribed requirements, and such alternatives, and other data, as may be requested in the Proposal Form or prior to the Notice of Award.

2.09.3 The City reserves the right to increase the value of the contract by adding alternatives described in the Proposal.

2.09.4 Causes for Rejection; Waiver of Irregularities; Disqualification - In any case, of ambiguity or lack of clarity in stating the prices in the proposal, the City will use the construction most advantageous to it or reject the proposal.

2.09.5 Other causes for the City, at its sole discretion, to disqualify a proposer or reject its proposal include:

- a) The response has any omission, alteration of form, addition or condition not called for, or unreasonable or unbalanced unit bid prices.
- b) The response is incomplete or is not accompanied by an acceptable bid guaranty.
- c) More than one response is submitted by the respondent.
- d) There is evidence of collusion among respondents.
- e) There is evidence of unsatisfactory performance, default or litigation with an owner by the respondent under a previous contract, either with this City or with another owner, including work by the respondent as a subcontractor.
- f) There is evidence that the respondent is behind schedule, in arrears in payment to an employee, subcontractor or material supplier, in default, or in litigation with an owner under an existing contract.
- g) The City determines that the respondent is not responsible because there is evidence that the respondent does not have sufficient qualifications (including without limitation, lack of experience, poor safety record, insufficient personnel, equipment, financial resources, or any other attribute) to assure the satisfactory completion of the Project.
- h) The City determines that the respondent has been convicted of a criminal offense committed in Texas involving fraud, theft, bribery, kickbacks or unlawful gifts to a public official if the conviction occurred within three years immediately preceding either the date of submission of your bid, the submission of your statement of respondent's qualifications or the advertised contract award date.

2.09.6 Each respondent by submission of a response waives any claims it has or may have against the City and any consultants, and any trustees, officers, and employees of the City, connected with or arising out of the solicitation administration, proposal evaluation, recommendation for Contract award, the award of the Contract, and the rejection of any

proposal.

2.10 SALES TAX

2.10.1 The Proposer shall investigate all statutory requirements for the payment of sales taxes and shall include the cost of any such payments in the Proposal prices of his proposal.

2.10.2 The Proposer's attention is directed to Chapter 151 of the Tax Code of the State of Texas. This section provides that all items used or consumed in direct pursuance of this Contract can be purchased free of Texas sales tax since the project is being performed for an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas.

2.11 LAWS AND REGULATIONS

2.11.1 The Proposer's attention is directed to the fact that all applicable Texas state laws, municipal ordinances and rules and regulations of all authorities having jurisdiction over the work to be performed and services to be provided will apply to the Contract through out, and they will be deemed to be included in the Contract the same as if herein written out in full.

2.12 INDEPENDENT CONTRACTOR

2.12.1 The selected respondent if an Individual will be an independent contractor under the contract. Professional services provided by the selected Firm or Individual shall be by the employees or authorized subcontractors of the selected Firm or Individual and subject to supervision by the selected Firm or Individual, and not as officers, employees or agents of the City. Selected Firm or Individual will be required and agrees to comply with all state and federal employment laws as well as all other federal, state and local laws, rules and regulations affecting the performance of all obligations taken herein.

2.13 RESIDENT PROPOSERS

2.13.1 Local vendor preference is not applicable for this RFP. Texas provides no advantage to resident Proposers in the award process.

2.14 ANTI-LOBBYING AND PROCUREMENT

2.14.1 Proposers are prohibited from directly or indirectly communicating with City Council members regarding the Proposer's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFP. Proposers are prohibited from contacting city staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the Proposer from the selection process.

2.14.2 Lobbying activities or representations by the Proposer are prohibited between the date that the solicitation is issued and the date of contract execution.

2.14.3 During a no-contact period, a Proposer shall make a representation only through the authorized contact person.

2.14.4 During the no-contact period, a Proposer may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a Proposer. The prohibition of a representation during the no-contact period applies to a representation

initiated by a Proposer, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

2.15 SAFEGUARDING OF INFORMATION AND DATA

2.15.1 The Contractor shall safeguard all information and data provided by the City. Further, Contractor shall not sell or make available data or mailing lists compiled from data received from the City without the express written approval of the City Council, through the City Purchasing Manager, with appropriate remuneration to the City.

2.16 CONFIDENTIALITY OF DOCUMENTS

2.16.1 All proposals submitted will be subject to the Texas Public Information Act.

2.16.2 In the event a request for public information is filed with the City, which involves a Firm or Individual's proprietary information submitted to the City in a proposal, the Firm or Individual affected by such public information request will be notified by the City of the request in order to give the affected Firm or Individual an opportunity to respond to the request.

2.16.3 **On each page where confidential information appears, the Firm or Individual must label the confidential information. Failure to so label the confidential information shall be considered as a waiver of any confidentiality rights or interests by said Firm or Individual.**

2.16.4 Marking your entire Proposal **CONFIDENTIAL/PROPRIETARY** is not in conformance with the Texas Public Information Act.

2.16.5 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this RFP and the Respondent agrees that any contract resulting from this solicitation can be terminated by the City if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

2.17 NON-NEGOTIABLE TERMS - The following terms or conditions are not negotiable:

2.17.1 Unfunded Liability. The City will not incur a debt or obligation to pay selected Firm or Individual any amounts the City does not have the current funds available to pay, unless the contract includes a provision for the City to appropriate funding for the debt or obligation.

2.17.2 Advance Payments. The City will not make advance payments to a selected Firm or Individual or any third party pursuant to this RFP or resulting contract.

2.17.3 Gift of Public Property. The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Firm or Individual.

2.17.4 Procurement Laws. The City will not agree to any terms or conditions that cause the City to violate any federal, Texas, or local procurement laws, including its own charter.

2.17.5 Limitation of Liability. The City will not agree to allow the selected Firm or Individual to limit its liability for breach or default of contract to the contract amount or to the amount the City has paid up to the time of the breach or default.

2.17.6 Attorney's fees; Legal Costs. The City will not agree to pay the selected Firm or Individual's attorney's fees or other legal costs.

2.17.7 Delinquent Payments; Interest. The City will not consider a payment delinquent, which is made within 30 days of receipt of the selected Firm or Individual's invoice, in accordance with Texas law. If the City does not pay what is due and owing within the 30 days, the City will not agree to pay more than 1% interest per month on the overdue amount, in accordance with Texas law Terms of payment and interest will be in accordance with Texas Government Code Chapter 2251.

2.17.8 Venue; Applicable Law. This solicitation and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the solicitation are fully performable in Comal County, Texas, and venue for any dispute regarding the contract or this solicitation shall be in Comal County, Texas.

2.18 PROPOSAL GUARANTY

2.18.1 All Proposals shall be accompanied by a proposal guaranty in an amount of not less than five percent (5%) of the total Proposal. If the total Proposal amount is \$100,000 or less, Proposer has the option of providing a cashier's or certified check, made payable to City of New Braunfels, or a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City. If the total Proposal amount exceeds \$100,000, the only acceptable proposal guaranty will be a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City.

2.18.2 Proposal guaranty accompanying the Proposal of the apparent low Proposer will be retained until Contract is awarded and successful Proposer executes Contract and furnishes required bonds and insurance, after which proposal guaranty will be returned to the Proposer. Proposal guaranty accompanying the second lowest Proposer will be retained until Contract is awarded. All other proposal guaranties will be returned after Proposal certification.

2.19 CONTRACT SECURITY

2.19.1 The required performance and payment bonds and a copy of the executed contract must be delivered to Owner not later than 10 days after Notice of Award.

2.20 PERFORMANCE AND PAYMENT BONDS

2.20.1 When performance or payment bonds are required, each shall be issued in equal to the Contract Amount as security for the faithful performance or payment of all Contractors' obligations under the Contract Documents. Performance and payment bonds shall be issued by a solvent company authorized to do business in the State of Texas and shall meet any other requirements established by law or by the City pursuant to applicable law.

2.21 INSURANCE AND LIABILITY COVERAGE

2.21.1 During the period of this contract, Contractor shall maintain at his expense, insurance with limits not less than those prescribed in the Contract Documents.

2.22 CERTIFICATE OF INTERESTED PARTIES (Form 1295)

Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission (TEC) found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed **Certificate of Interested Parties (Form 1295)** to the City before the City may enter into a contract with that business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Standard Filing Process: Form 1295 is accessible at, and must be completed online, at the following web address:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

A business entity must enter the required information as directed on Form 1295 and then print a copy of the completed form after it has been submitted online. It is important to note that the information that is required in 'Certification Number' and 'Date Filed' fields in the 'Certification of Filing' box on the form will not be generated until the form has been **submitted**, not saved. An authorized agent of the business entity must then complete the information required in the "Unsworn Declaration" field of the form and sign the printed copy of the form, containing the unique Certification Number and filing date. The completed and signed Form 1295 must be filed with the governmental body or state agency with which the business entity is entering into the contract; the governmental body or state agency will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website.

Solicitation Document: If a completed Form 1295 is requested in a solicitation document issued by the City, Respondent shall reference the City's solicitation number in Box 3 of the form as a contract number is not generated until the award of a contract by City Council. Respondents must submit the original, notarized form with their response to the solicitation. The City will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website when the contract has been awarded.

2.23 REQUIREMENT FOR DISCLOSURE OF CONFLICT OF INTEREST

In accordance with Chapter 176 of the Texas Local Government Code, "Disclosure of Certain Relationships with Local Government Officers," persons, or their agents who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a **Conflict of Interest Questionnaire (Form CIQ)** with the City Secretary if the vendor has a business relationship as defined by Section 176.001(1-a) with the City and the vendor meets requirements under Section 176.006(a).

Form CIQ is available from the Texas Ethics Commission by accessing the following web address:
https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm

The Conflict of Interest Questionnaire (Form CIQ) is required to be filed within 7 business days of:

- a. Beginning of discussions or negotiations to enter into a contract with the City; or
- b. Submission of an application, response to a request for proposals or bids, correspondence or other writing related to a potential agreement with the City.

If requested in the solicitation document, all respondents are to submit a completed Conflict of Interest Questionnaire (Form CIQ) with their proposal in addition to submitting a completed Form CIQ to the office of the City Secretary located at 550 Landa Street; New Braunfels, Texas 78130.

By law, Form CIQ must be filed with the City Secretary no later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

2.31 MISCELLANEOUS

- 2.31.1** All costs directly or indirectly related to the preparation of a response to this proposal shall be the sole responsibility of and shall be borne by the firm.
- 2.31.2** During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Firm or Individuals, or to allow corrections of errors or omissions.
- 2.31.3** The City reserves the right to retain all proposals submitted and to use non-confidential information in a response regardless of whether or not that proposal is selected.

END OF SECTION

ATTACHMENT 1
RESPONDENT'S PRICING PROPOSAL FORM

Proposal of: _____

(Respondent's Company Name)

To: Purchasing Manager
City of New Braunfels
-550 Landa Street
New Braunfels, Texas 78130

Project Name: **Zipp Family Sports Complex**

RFP No: 23-015

Having carefully examined all the requirements of this RFP, the proposed form of Agreement, and any attachments to them, the undersigned proposes to furnish Construction Manager-At-Risk services as required for this Project on the following terms:

1. **ESTABLISHMENT OF THE CONSTRUCTION MANAGER'S BUDGET LIMITATION:** The Owner has established a Construction Manager's Budget Limitation (CMBL) amount of \$29,000,000.00 that includes the Pre-Construction Phase Fee and the Construction Services Guaranteed Maximum Price Proposal. Respondents shall base the pricing information requested below on the CMBL, with the understanding that in addition to being inclusive of the Pre-Construction Phase Fee, it also includes the Construction Phase Fee and the cost for fulfilling the project general conditions.
2. **RESPONDENT'S PRE-CONSTRUCTION PHASE FEE:** The Respondent shall identify a Pre-Construction Phase Fee in lump sum.

Respondent's Pre-Construction Phase Fee \$ _____

3. **ESTABLISHMENT OF THE CONSTRUCTION COST LIMITATION:** Using the CMBL and the Respondent's Pre-Construction Phase Fee identified above, the Respondent shall identify the Construction Cost Limitation (CCL) as follows:

Construction Manager's Budget Limitation	\$ 29,000,000.00
--	------------------

(less)

Owner's Construction Contingency	\$ 2,900,000.00
----------------------------------	-----------------

(less)

Respondent's Pre-Construction Phase Fee (as identified above)	\$ _____
---	----------

(equals)

Respondent's Construction Cost Limitation	\$ _____
---	----------

4. **RESPONDENT'S CONSTRUCTION PHASE FEE:** Using the CCL identified above, the Respondent shall identify a Construction Phase Fee percentage, pursuant to Article 6 of the Agreement:

Respondent's Construction Phase Fee Percentage _____ %

Respondent's Estimated Construction Phase Fee Amount
(percentage times the CCL above) \$ _____

5. **RESPONDENT'S NOT-TO-EXCEED GENERAL CONDITIONS COSTS:** Using the intended Notice to Proceed date of March 2023 and Substantial Completion deadline of July 15, 2023, the Respondent shall provide pricing for fulfilling the project general conditions. Said pricing may be either a lump sum amount or a percentage of the CMCL.

Respondent's General Conditions Percentage _____ %

(equals)

Respondent's Estimated General Conditions (*percentage times the CCL above*) \$ _____

Total Construction Duration (*Notice To Proceed for Construction to Final Completion as identified in Section 2.5*) 15 months

A. Using the not-to-exceed General Conditions costs identified above, the Respondent shall identify all project management, bonds, insurance, field office and office supply costs for the Project as listed below:

<u>Allowable General Condition Line-Item Category</u>	<u>Estimated Total Cost</u>
On-Site Project Management Staff	subtotal \$ _____
Bonds and Insurance	subtotal \$ _____
Temporary Project Utilities	subtotal \$ _____
Field Offices & Office Supplies	subtotal \$ _____

Estimated On-Site Project Management Staff and Rates

<u>Position</u>	<u>Quantity</u>	<u>Months</u>	<u>Monthly Salary Rate</u>
Project Executive	_____	_____	\$ _____
Project Manager	_____	_____	\$ _____
Superintendent(s)	_____	_____	\$ _____
Assistant Superintendent(s)	_____	_____	\$ _____
Project Engineer/Expeditor(s)	_____	_____	\$ _____
Field/Office Engineer(s)	_____	_____	\$ _____
Field Office Support Staff	_____	_____	\$ _____
CPM Scheduler	_____	_____	\$ _____
Safety Coordinator/Assistant(s)	_____	_____	\$ _____

ADDENDA: Receipt is hereby acknowledged of the following addenda to this RFP (initial if applicable).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____ No. 6 _____

AWARD OF CONTRACT AND COMMENCEMENT OF SERVICES: The undersigned agrees to execute the Contract after notification that the Respondent has been identified by the City as the Respondent with the "best value" Proposal, and to commence services on or before the commencement date stated by the City in a Notice to Proceed. The City reserves the right to accept or reject all Proposals and to waive proposal irregularities. Proposals shall be valid and not withdrawn for a period of ninety (90) days from the date of opening thereof.

THIS FORM MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM MAY RESULT IN REJECTION OF THE PROPOSAL.

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED PROPOSAL OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSAL, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT OWNER'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

1. By signature hereon, Respondent acknowledges and agrees that (1) this RFP is a solicitation for proposals and is not a contract or an offer to contract; (2) the submission of proposals by Respondent in response to this RFP will not create a contract between the Owner and Respondent; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this RFP; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this RFP.
2. By signature hereon, Respondent offers and agrees to furnish to the Owner the products and/or services more particularly described in its proposal, and to comply with all terms, conditions and requirements set forth in the RFP documents and contained herein.
3. By signature hereon, Respondent affirms that he has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted proposal.
4. By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.
5. By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or Owner represented by the Respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
6. By signature hereon, Respondent represents and warrants that:
 - a. Respondent is a reputable company regularly engaged in providing products or services necessary to meet the terms, conditions and requirements of the RFP;
 - b. Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the RFP;
 - c. Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
 - d. Respondent understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Contract under which Respondent will be required to operate;
 - e. Respondent, if selected by the Owner, will maintain insurance as required by the Contract;
 - f. All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Respondent acknowledges that the Owner will rely on such statements, information and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify

the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.

7. By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Respondent's proposal.
8. By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of the City of New Braunfels, or Respondent has not been an employee of the City of New Braunfels within the immediate twelve (12) months prior to your RFP response. All such disclosures will be subject to administrative review and approval prior to the Owner entering into any contract with Respondent.
9. By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP.
10. Respondent represents and warrants that all articles and services quoted in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
11. By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
12. BY SIGNATURE HEREON, RESPONDENT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY OF NEW BRAUNFELS, ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSAL.

[signature page to follow]

13. Execution of Offer: RFP No. 23-015

The Respondent must complete, sign and return this Execution of Offer as part of their submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. Failure to sign and return this form will subject the submittal to disqualification.

Respondent's Name: _____

Respondent's State of Texas Tax Account No.: _____

(This 11 digit number is mandatory)

If a Corporation:

Respondent's State of Incorporation: _____

Respondent's Charter No: _____

Identify each person who owns at least 25% of the Respondent's business entity by name:

(Name)

(Name)

(Name)

(Name)

Submitted and Certified By:

(Respondent's Name)

(Title)

(Street Address)

(Telephone Number)

(City, State, Zip Code)

(Fax Number)

(Authorized Signature)

(Date)

ATTACHMENT 2

BOND FORMS

BID BOND

PERFORMANCE

PAYMENT

BID BOND

THE STATE OF TEXAS
§
COUNTY OF _____
§

KNOW ALL BY THESE PRESENTS:

That we, _____, as Principal herein, and _____, a corporation organized and existing under the laws of the State of _____, and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto the **City of New Braunfels**, located in **Comal County, Texas**, Obligee herein, in the sum of _____ Dollars (\$_____) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying Proposal, dated the ___ day of _____, 20____, which is hereto attached and made a part hereof for all purposes, for the construction of the Zipp Family Sports Complex.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, if the said Principal shall not withdraw said Proposal within the period specified therein after the opening of same, or, if no period be specified, within thirty (30) days after the said opening, and shall within the period specified therefore, or if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into written Contract with the Obligee in accordance with the Proposal as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, or in the event of the withdrawal of said Proposal within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Proposal and the amount for which the Obligee may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

PRINCIPAL

ATTEST:

(Principal) Secretary

(S E A L)

By: _____

Name: _____

Title: _____

Address: _____

Witness as to Principal

Telephone Number: _____

SURETY

ATTEST:

Secretary

(S E A L)

By: _____

Name: _____
Attorney in Fact

Address: _____

Witness as to Surety

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

PERFORMANCE BOND

THE STATE OF TEXAS
COUNTY OF _____

KNOW ALL BY THESE PRESENTS:

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety's state of incorp] and who is authorized and admitted to issue surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of New Braunfels, a municipal corporation with its principal location of 550 Landa St., New Braunfels, Texas, Comal County, Obligee herein, in the sum of [printed amount of bond] Dollars (\$[numeric amount of bond]) for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract Documents and shall fully indemnify and hold harmless the Obligee from all costs and damages which Obligee may suffer by reason of Principal's failure to perform the Work in conformity with the Contract Documents, and reimburse and repay Obligee for all outlay and expense that Obligee may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect. Whenever Contractor shall be declared by Obligee to be in default under the Contract, the Surety shall, upon request of Obligee and within seven (7) calendar days from receipt of Obligee's notice of Contractor's default, commence and thereafter complete performance of Contractor's obligations under the Contract. This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and

any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20 ____.

The date of bond shall not be prior to date of Contract.

PRINCIPAL

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

ATTEST:

Secretary

(S E A L)

Witness as to Surety

By: _____

Name: _____

Attorney in Fact

Address: _____

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:

City of New Braunfels
550 Landa St.
New Braunfels, Texas 78130

By: _____

Title: _____

Date: _____

PAYMENT BOND

THE STATE OF TEXAS

§

COUNTY OF _____

§

KNOW ALL BY THESE PRESENTS:

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety's state of incorp] and who is authorized and admitted to issue surety bonds in the State of Texas, as surety, are held and firmly bound unto the City of New Braunfels a municipal corporation with its principal location of 550 Landa St., New Braunfels, Texas, Comal County, Obligee herein, in the sum of [printed amount of bond] Dollars (\$[numeric amount of bond] for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the ____ day of _____, 20____, which contract is hereby referred to herein as "the Contract" and is incorporated herein to the same extent as if copied at length, for the following project: Zipp Family Sports Complex.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall directly or indirectly timely make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be void; otherwise, to remain in full force and effect. *This obligation may be enforced by the Obligee in the event of bankruptcy or default by Principal in payments to suppliers of labor or materials in the prosecution of the work under the Contract, in either of which events the Surety shall make such payments as Principal has failed to pay and as may be required to complete the work under the contract.* The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in

accordance with the provisions of said statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract Documents.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 20____.

The date of bond shall not be prior to date of Contract.

PRINCIPAL

ATTEST:

(Principal) Secretary

(S E A L)

By: _____

Name: _____

Title: _____

Address: _____

Witness as to Principal

Telephone Number: _____

SURETY

ATTEST:

Secretary

(S E A L)

By: _____

Name: _____

Attorney in Fact

Address: _____

Witness as to Surety

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:

City of New Braunfels
550 Landa St.
New Braunfels, Texas 78130

By: _____

Title: _____

Date: _____

ATTACHMENT 3

WAGE RATE DETERMINATION

COUNTY NAME: COMAL

Wages are based on DOL General Decision:

TX TX20200007- HEAVY AND HIGHWAY CONSTRUCTION

- Wages shall be paid in accordance with the Davis Bacon Wage Rates.
- <https://sam.gov/>

PREVAILING WAGES

Proposers must comply with all requirements of the prevailing wage Statue 2258 for non- Federal contracts and Davis-Bacon and Related Acts for federal contracts.

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.
<https://sam.gov/>

Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to Owners rates and classification proposed for use, for approval, prior to performance of the Work.

EMPLOYMENT REQUIREMENTS AND WAGE RATES

This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owners harmless for any failure to so comply and any discrimination for which Contractor may be charged.

Contractor and each Subcontractor shall keep certified payrolls be collected and maintained by the Contractor for itself and all subcontractors and made available to the Owners as may be required upon request or for audit at completion of the job.

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A

public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

"General Decision Number: TX20220007 02/25/2022

Superseded General Decision Number: TX20210007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McLennan and Williamson Counties) and HIGHWAY Construction Projects

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a) (2)-(60) .

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: 	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the	. Executive Order 13658 generally applies to the contract.

contract is not renewed or	. The contractor must pay all
extended on or after January	covered workers at least
30, 2022:	\$11.25 per hour (or the
	applicable wage rate listed
	on this wage determination,
	if it is higher) for all
	hours spent performing on
	that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures)	\$ 12.56 **	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.94 **	
Structures.....	\$ 12.87 **	
LABORER Asphalt Raker.....	\$ 12.12 **	
Flagger.....	\$ 9.45 **	
Laborer, Common.....	\$ 10.50 **	
Laborer, Utility.....	\$ 12.27 **	

Request for Proposals (RFP) 23-015
Construction Manager-at-Risk Services

City of New Braunfels

Pipelayer.....\$ 12.79 **
Work Zone Barricade
Servicer.....\$ 11.85 **

PAINTER (Structures)\$ 18.34

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....\$ 12.69 **
Asphalt Distributor.....\$ 15.55
Asphalt Paving Machine.....\$ 14.36 **
Boom Truck.....\$ 18.36
Broom or Sweeper.....\$ 11.04 **
Concrete Pavement
Finishing Machine.....\$ 15.48
Crane, Hydraulic 80 tons
or less.....\$ 18.36
Crane, Lattice Boom 80
tons or less.....\$ 15.87
Crane, Lattice Boom over
80 tons.....\$ 19.38
Crawler Tractor.....\$ 15.67
Directional Drilling
Locator.....\$ 11.67 **
Directional Drilling
Operator.....\$ 17.24
Excavator 50,000 lbs or
Less.....\$ 12.88 **
Excavator over 50,000 lbs...\$ 17.71
Foundation Drill, Truck
Mounted.....\$ 16.93
Front End Loader, 3 CY or
Less.....\$ 13.04 **
Front End Loader, Over 3 CY.\$ 13.21 **
Loader/Backhoe.....\$ 14.12 **
Mechanic.....\$ 17.10
Milling Machine.....\$ 14.18 **
Motor Grader, Fine Grade....\$ 18.51
Motor Grader, Rough.....\$ 14.63 **
Pavement Marking Machine....\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88 **
Roller, Asphalt.....\$ 12.78 **
Roller, Other.....\$ 10.50 **
Scraper.....\$ 12.27 **
Spreader Box.....\$ 14.04 **
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....	\$ 14.00	**
Structural.....	\$ 19.29	

TRAFFIC SIGNALIZATION:

Traffic Signal Installation

Traffic Signal/Light Pole	
Worker.....	\$ 16.00

TRUCK DRIVER

Lowboy-Float.....	\$ 15.66	
Off Road Hauler.....	\$ 11.88	**
Single Axle.....	\$ 11.79	**
Single or Tandem Axle Dump		
Truck.....	\$ 11.68	**
Tandem Axle Tractor w/Semi		
Trailer.....	\$ 12.81	**

WELDER.....\$ 15.97

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information

Request for Proposals (RFP) 23-015
Construction Manager-at-Risk Services
on contractor requirements and worker protections under the EO
is available at
<https://www.dol.gov/agencies/whd/government-contracts>.

City of New Braunfels

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all

rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour

Request for Proposals (RFP) 23-015
Construction Manager-at-Risk Services

City of New Braunfels

National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

ATTACHMENT 4

VENDOR CERTIFICATIONS

The Proposer is required to submit the following information to Owners for consideration:

Provide responses that are clear and comprehensive.

Company name: _____

Permanent main office address: _____
Street _____ City, ST _____ ZIP _____

Tax ID No.: _____

1. Provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in lawsuits, contracts defaulted or filed for bankruptcy.

2. Form of Ownership: Proprietorship Partnership Corporation Other (specify) _____

DEBARMENT/SUSPENSION INFORMATION:

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity? Yes No

If yes, identify in an attachment the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

SURETY INFORMATION

1. Has the Respondent ever had a bond or surety canceled or forfeited? Yes No

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. (Provide in this format.)

1. Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes No

If yes, state in an attachment, the date, court, jurisdiction, cause number amount of liabilities and amount of assets.

2. Provide a list of officers of the firm who, while in the employ of the firm or the employee of previous firms, were associated with contracts which result in lawsuits, contracts defaulted or filed for bankruptcy. (Please attach if applicable.)

LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure may result in the disqualification of your bid/proposal from consideration or termination of the contract, once awarded.

1. Has your company ever failed to complete, defaulted, or been terminated on a project?

Yes No

If yes, attach the project name and location, Owners and architect names, and explanation of the occurrence.

2. Does your company have any involvement in prior, pending or threatened claims or litigation alleging?

A) Non-compliance by your company with any obligations under any current contract or previous contract within the last five years, including completion, remaining on schedule and cooperation with the Owners; or Yes No

B) Any error or omission by your company in performing services under any current contract or previous contract within the last five years; and/or Yes No

C) Non-payment to Sub-Contractors and material suppliers? Yes No

D) Have your or any member of your Firm or Team paid liquidated damages in the last three (3) years? Yes No

If you answered yes to any of the above questions, provide in an attachment the project name and location, Owners and architect names, and explanation of the nature, status and/or outcome of such claim or litigation.

3. Has your company or any of your Sub-Contractors' companies ever failed to take corrective action on items of work under warranty during the warranty period? Yes No

4. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes No

1. Please indicate the current limit of your Bonding Capacity: _____

2. How much work is your firm currently contracted to provide? (Provide current total amount of work in dollars from ALL sources.) _____

3. List bank references, including name and title, address and phone of contact person.

4. Will you provide a detailed financial statement and furnish any other pertinent information that may be required by the City. Yes No
If no, explain: _____

CERTIFICATIONS:

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. Yes No
 - A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution;
 - B. "fraudulent practice" means an intentional misrepresentation of facts made
 1. to influence the solicitation process or the execution of the Contract to the detriment of Owners,
 2. to establish Cost Estimate or Contract prices at artificial non-competitive levels, or
 3. to deprive Owners of the benefits of free and open competition;
 - C. "collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owners, a purpose of which is to establish Cost Estimates at artificial, non-competitive levels; and
 - D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

2. NON-COLLUSION CERTIFICATION:

- A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's cost estimate? Yes No
 1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
 2. That your cost estimate is genuine and is not a collusive or sham cost estimate;

3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost estimate, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost estimate or in any other cost estimate, or to secure through
4. any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
5. The prices quoted in your cost estimate are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

3. Contracts with Companies that Boycott Energy Companies

Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

Yes

No

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the

governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds

3. Contracts with Companies that Discriminate Against Firearm Industry

Contractor verifies that (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm Trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

Yes

No

If Contractor is a company with 10 or more full time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274 it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

4. CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL:

A. Contractor verifies that it: (1) does not boycott Israel currently; and (2) will not boycott Israel during the term of the contract:

Yes

No

B. Pursuant to Sections 2271 of the Texas Government Code:

1. “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

C. Pursuant to subtitle F, Chapter 2252, Texas Government Code, contractor verifies that it will not engage in business with Iran, Sudan or a foreign terrorist organization while providing products or services under a governmental contract.

Yes

No

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

ACKNOWLEDGEMENT

THE STATE OF
TEXAS COUNTY
OF COMAL

I certify that I have read all of the specifications and general RFQ requirements and do here by certify that all items submitted meet specifications. I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation, and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my response to this solicitation to be rejected.

Company's Name

Signature, Authorized Representative of Respondent

Title

**ATTACHMENT 5
INSURANCE RIDER**

City of New Braunfels Insurance Requirements Construction and/or Renovation

INSURANCE AND LIABILITY: During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall:

- 4 Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
- 5 Provide City of New Braunfels a waiver of subrogation.
- 6 Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- 7 Provide the City Purchasing Agent at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.

Submit a certificate of insurance reflecting the following coverages.

Commercial General Liability

General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000
Each Occurrence	\$500,000
Personal/Advertising Injury	\$500,000
Damage to Premises Rented to You- Short Term Lease (Any one Fire)	\$100,000
Damage to Premises Rented to You- Long Term Lease (Any one Fire) depending on terms of contract	\$500,000
Medical Payments (Any One Person)	\$5,000

Aggregate must apply per project. Liability assumed by contract including defense cost must be included. Required additional insured status should apply to "on-going operations" and "completed operations" of the insured.

Builders' Risk

Other Requirements/Considerations: Project Value

Builder's Risk will be purchased by the general contractor.

Umbrella Liability

Each Occurrence	\$500,000
General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000

Commercial Automobile Liability **

All owned, non-owned, rented, hired and leased autos must be included. Coverage for "Any Auto" is recommended.

Bodily Injury/Property Damage (Combined Single Limit, Each Incident)

\$1,000,000

Personal Injury Protection (PIP)

\$5,000

Workers' Compensation/Employers Liability

Workers' Compensation (*required by law for companies with 50+ employees or political subdivision*)

Statutory

Employers Liability

Each Accident

\$1,000,000

Policy Limit by Disease

\$1,000,000

Each Employee by Disease

\$1,000,000

ATTACHMENT 6
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER-AT-RISK

This Agreement is made and entered into as of the _____ day of _____, 2023 by and between the:

“Owner”

City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

and

“Construction Manager”

a [Insert Business Entity Type] organized under the laws of the State of _____.

for the following Project:

Zipp Family Sports Complex

[Project Location]

The Project's Engineer is:

Walker Partners
Consultant of Project Landscape Architect
Norris DTX d/b/a Norris Design
2201 E. Sixth St. Austin, Texas 78702

The Owner and Construction Manager agree as follows.

ARTICLE 1 - GENERAL PROVISIONS

1.01 *Contract Documents*

- A. The Contract Documents, as enumerated in this Standard Form of Agreement Between Owner and Construction Manager-At-Risk (hereinafter the Agreement), consist of the Agreement, General Conditions of the Contract, Drawings, Specifications, Addenda issued prior to execution of the Contract, performance and payment bonds, insurance rider, if any, and other documents listed in the Agreement and Modifications issued after execution of the Contract.
- B. The Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representations or agreements. The Contract Documents may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Construction Manager.
- C. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Request for Qualifications, Request for Proposal, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.
- D. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 4.04 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Engineer and furnished by the Owner as described in Section 4.04. The Agreement, as described in this section 1.01, represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

1.02 *Relationship of the Parties*

The Parties each agree to proceed with the Project on the basis of mutual trust, good faith, and fair dealing. The relationship between the Parties is intended to facilitate each Party's interest in the Project but is not intended in any way to create a fiduciary obligation between them.

- A. The Construction Manager agrees to cooperate with the Owner and Engineer and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner. The Construction Manager shall (a) furnish efficient construction administration, management services and supervision; (b) furnish, at all times, an adequate supply of workers and materials; and (c) perform the Work in an expeditious and economical manner consistent with the Contract Documents.
- B. The Construction Manager is an independent contractor and shall not act on behalf of or in the name of the Owner except as may be provided in this Agreement or the Contract Documents and as expressly authorized by the Owner's Representative.

1.03 *Definitions*

Unless otherwise stated in this Section, the Terms used in this Agreement will have the meanings indicated in the General Conditions.

- A. ***Construction Manager*** - A Construction Manager is a person or entity identified as such in the Agreement and is responsible for performing all or a portion of the construction required in connection with the Work for the Owner. The Construction Manager is referred to throughout the Contract Documents as if singular in number and means a Construction Manager or an authorized representative of the Construction Manager.
- B. ***Engineer*** - The Engineer is a person or entity providing design services for the Owner for all or a portion of the Work, and is lawfully licensed to practice engineering in the applicable jurisdiction. The Engineer is referred to throughout the Contract Documents as if singular in number.
- C. ***Guaranteed Maximum Price Amendment*** - The Guaranteed Maximum Price (“GMP”) Amendment is executed after the Engineer completes the design phase of services and Construction Manager provides the Owner with a GMP Proposal. Upon agreement to a proposal, the Owner and Construction Manager are required to execute the GMP Amendment, which becomes a part of the Agreement. The GMP Amendment establishes the Contract Sum and Contract Time and sets forth the agreed upon design documents and other information upon which the Contract Sum and Contract Time are based. In establishing the Contract Sum, the parties can choose a Stipulated Sum or Cost of the Work (with or without a GMP). If the parties choose Cost of the Work, the Amendment establishes the items included within the Cost of the Work.
- D. ***Instruments of Service*** - Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Engineer and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.
- E. ***Modification*** - A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.
- F. ***Owner*** - The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.
- G. ***Project*** - The Project is the cumulative design and construction of the facility or improvements which the Work performed under the Contract Documents may be the whole or a part, and may include design and construction by the Owner, Owner’s Engineer, and by separate consultants and contractors.

- H. ***Project Budget*** - The total sum of money allocated to the Project by the Owner as stated in the solicitation for CMAR Services. The Project Budget may only be amended by properly executed Modification.
- I. ***Submittals*** - A Submittal is any submission to the Owner for review and approval demonstrating how the Construction Manager proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Contract Documents unless incorporated into a Modification.
- J. ***Work*** - The term “Work” means the preconstruction and construction services and performance items required to fulfill the Construction Manager’s obligations under the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Construction Manager. The Work may constitute the whole or a part of the Project.

ARTICLE 2 - CONSTRUCTION MANAGER’S RESPONSIBILITIES

2.01 The Construction Manager shall perform all preconstruction, procurement, construction, start-up and performance testing services required by the Contract Documents. The Construction Manager shall provide all material, equipment, tools, labor, and supervision and coordination necessary to complete the Work in full accord with and reasonably inferable from the Contract Documents. The Construction Manager shall be responsible for its own construction means, methods, techniques, sequences, and procedures unless the Contract Documents provide other specific instructions or requirements.

The Construction Manager shall permit only qualified and skilled persons to perform the Work. The Construction Manager shall enforce safety procedures, discipline, security, and good order among persons performing all aspects of the Work. The Construction Manager shall maintain good order and cleanliness at the site.

2.02 *General Responsibilities*

- A.** The Construction Manager shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.
- B.** The Construction Manager, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.
- C.** The Construction Manager shall designate in writing a representative who is authorized to act on the Construction Manager’s behalf with respect to the Project. Such designation may not be changed without written notice to and approval of the Owner, such approval may not be unreasonably withheld.
- D.** The Construction Manager shall perform the Work in strict accordance with the Contract Documents. This obligation shall be absolute. The Construction Manager shall not be

relieved of the obligation to perform the Work in strict accordance with the Contract Documents by the activities, tests, inspections or approvals of the Owner.

1. The Construction Manager shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Construction Manager performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Construction Manager shall assume responsibility for such Work and shall bear the costs attributable to correction.
2. Neither the Construction Manager nor any Subcontractor, Consultant, Engineer or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Construction Manager determines that implementation of any instruction received from the Owner, including those from the Engineer, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Construction Manager shall notify the Owner and the Engineer in writing. Upon verification by the Owner that a change to the Construction Documents is required to remedy the violation, the Owner and the Construction Manager shall execute a Modification in accordance with Article 4.

E. The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Consultants, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work.

F. If part of the Work requires design, engineering, or other professional services of the Construction Manager or its consultants, or when applicable law requires that services be performed by licensed professionals, the Construction Manager shall provide those services through qualified, licensed professionals in accordance with the Texas Occupations Code and all applicable legal standards of care applicable to design professionals.

G. The Owner and Construction Manager may agree, in consultation with the Engineer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

2.03 *Preconstruction Services*

- A. The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other. Following the preliminary evaluation, the Construction Manager shall perform additional evaluations and updates to prior evaluations throughout the preconstruction period of the Project.

- B.** The Construction Manager shall schedule and attend regular meetings with the Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner on proposed site use and improvements, selection of materials, and systems and equipment. The Construction Manager shall also provide the Owner with recommendations, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.
- C.** During the Preconstruction period the Construction Manager shall review the Contract Documents to ascertain whether the components of the Project and its systems may be constructed without interference with each other or other elements and components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Engineer in writing. Failure to so notify will result in a waiver of any claims for additional time or compensation by the Construction Manager to the extent such interference impacts the Project during the construction phase. Further, any claims by the Construction Manager associated with conflicts of the systems addressed in this Section during the construction phase are waived if such conflicts could have been discovered through careful examination of the Contract Documents. Any failure by the Construction Manager to report known deviations or noncompliance will result in a waiver of any associated claims by the Construction Manager and **SHALL REQUIRE THE CONSTRUCTION MANAGER TO INDEMNIFY AND HOLD THE OWNER HARMLESS FOR ANY COSTS ASSOCIATED WITH THE CONSTRUCTION MANAGER'S FAILURE IN THIS REGARD.**
- D.** When Owner's Project requirements have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project Schedule for the Engineer's review and the Owner's acceptance. The Construction Manager shall coordinate and integrate into the Project Schedule the services of the Engineer, the Construction Manager, the Owner and any other governmental entities having jurisdiction over the Project. As the design proceeds, the Construction Manager shall update the Project Schedule to indicate proposed activity sequencing and duration, milestones, phases of the Work, issuance of construction documents, preparation and review of submittals, delivery of materials, construction, and substantial and final completion. In preparing the Project Schedule, the Construction Manager should provide notice to the Engineer and the Owner's upon the identification of items that could affect the Project's timely completion.
- E.** The Owner anticipates constructing the Work in multiple phases. For each phase of construction, the Construction Manager agrees to proceed with construction services on a phased basis with each phase subject to specific guaranteed maximum price amendments. The Construction Manager acknowledges and agrees that the performance of any phase prior to completion of the design shall not relieve the Construction Manager of continuing to perform preconstruction services required by this Agreement. The Construction Manager's obligation to perform preconstruction services continues until

such time as the Engineer seals construction documents for construction for the entire Project or all remaining phases, if applicable.

F. Preliminary Cost Estimates

1. Based on the preliminary design and other design criteria prepared by the Engineer, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Owner's and Engineer's review and Owner's approval. Said obligations shall apply to each phase, if any, and the entirety of the Project. If the Owner, Engineer, or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.
2. At the completion of the Schematic Design, Design Development and Construction Documents, and upon written notice of such phase completion by the Engineer to the Construction Manager and the Owner, the Construction Manager shall prepare and update estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Owner's and Engineer's review and the Owner's approval. The Construction Manager shall inform the Owner and Engineer when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action to reduce costs and maintain the Project budget.

2.04 *Guaranteed Maximum Price Proposal*

A. When the Preconstruction Services are complete, upon receipt of notice from the Engineer so indicating, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in the Contract Documents, and the Construction Manager's Fee. The Guaranteed Maximum Price proposal shall be submitted to the Owner no later than fifteen (15) days after the Preconstruction Services completion notice. The Construction Manager's obligations contained in this section apply to each phase individually and the Project as a whole, as applicable. The Construction Manager's Guaranteed Maximum Price ("GMP") Proposal shall include the following:

1. A list of the Drawings, Specifications, including all Addenda thereto, and other information, including the Construction Manager's clarifications and assumptions, upon which the Construction Manager's GMP Proposal is based;
2. The proposed Contract Price, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Construction Manager's Fee, and other items that comprise the Contract Price;

3. The proposed date the Construction Manager shall achieve Substantial Completion;
4. An enumeration of any qualifications and exclusions, if applicable;
5. A list of the Construction Manager's key personnel;
6. The date on which the Construction Manager's GMP Proposal expires (not less than 60 days), before such time that the Construction Manager may revise proposed pricing;
7. A statement that the proposed Guaranteed Maximum Price is not based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis; and
8. If Owner requests, Construction Manager shall make available for inspection the documents and information that form the basis of the GMP Proposal.

B. Submission of the Construction Manager's GMP Proposal shall constitute a representation by the Construction Manager that it has visited the site, evaluated the conditions and features of the site, made determinations relevant to construction relating to such evaluations, and become familiar with local conditions under which the Work is to be completed.

C. If the Owner and Construction Manager agree on a proposal, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment setting forth the terms of their agreement.

E. To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, for any phase or the Project as a whole as may be applicable, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 3 - WORK FOLLOWING EXECUTION OF THE GUARANTEED MAXIMUM PRICE AMENDMENT

3.01 *General*

Unless otherwise specified herein, all work performed pursuant to this Article shall be governed in accordance with the General Conditions.

3.02 *Construction*

- A.** **Commencement.** Except as otherwise permitted in this Section, construction shall not commence prior to execution of a Guaranteed Maximum Price Amendment.
- B.** If the Owner and Construction Manager agree in writing, construction may proceed prior to the execution of a Guaranteed Maximum Price Amendment. However, such authorization shall not waive the Owner's right to reject the Construction Manager's GMP Proposal.

3.03 *Concerning Subcontractors, Suppliers, and Others*

- A.** The Construction Manager shall develop bidders' interest in the Project and may prequalify bidders. Any prequalification or award of subcontracts must conform with this article 3, the General Conditions, and chapter 2269 of the Texas Government Code.
- B.** All portions of the Work, other than minor work, shall be performed by trade contractors, subcontractors, or self-performed by the Construction Manager. For each major scope of work, the performing contractor shall be selected using competitive bids or competitive sealed proposals pursuant to chapter 2269 of the Texas Government Code. The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:
 1. The successful bidder's responsibility to provide workers' compensation insurance in accordance with chapter 406 of the Texas Labor Code;
 2. The successful bidder's responsibility to pay prevailing wages pursuant to chapter 2258 of the Texas Government Code; and
 3. A notice of the sales tax exemption for the Project and the procedure for obtaining any required exemption verification or certificates.
- C.** The information required with publication in Section 3.03.B is not exclusive. The Construction Manager may include other information in such notices at its discretion or as may be required by law.
- D.** On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all bids or proposals in a manner compliant with chapter 2269 of the Texas Government Code.
- E.** On any portion of the Work for which the Construction Manager submits a bid or proposal to self-perform, Construction Manager must submit its sealed bid or proposal for self-performing work to the Owner 24 hours prior to the deadline for the bids or proposals from trade contractors for the same scope of work. The Owner shall receive and open the bids or proposals for self-performing work, in accordance with chapter 2269 of the Texas Government Code.

- F. After opening the bids or proposals, the Owner may meet with the Construction Manager to evaluate and rank the bidders or offerors. All bids or proposals shall be made public within seven (7) days after the date of final selection.
- E. The Construction Manager shall prepare, for the Owner's and Owner's Engineer's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. Said items may be included in an early phase Guaranteed Maximum Price Amendment to facilitate the Construction Manager expediting and coordination of the ordering and delivery of long-lead materials and specially manufactured goods so as not to delay overall construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them, including any warranty obligations.

3.04 Consultation and Scheduling

- A. The Construction Manager shall schedule and conduct progress meetings with the Owner, on a weekly basis, to review matters such as procedures, progress in construction, coordination, and scheduling of the Work.
- B. Progress Reports
 - 1. The Construction Manager shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Construction Manager, the Construction Manager shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:
 - a. Work completed for the period;
 - b. Project schedule status;
 - c. Submittal schedule and status report, including a summary of outstanding Submittals;
 - d. Responses to requests for information to be provided by the Owner;
 - e. Approved Change Orders and Change Directives;
 - f. Pending Change Order and Change Directive status reports;
 - g. Tests and inspection reports;
 - h. Status report of Work rejected by the Owner;
 - i. Status of Claims previously submitted in accordance with Article 12;
 - j. Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and Reimbursable Expenses, if any;
 - k. Current Project cash-flow and forecast reports; and
 - l. Additional information as agreed to by the Owner and Construction Manager.
 - 2. In addition, where the Contract Price is the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- a. Construction Manager's work force report;
 - b. Equipment utilization report; and
 - c. Cost summary, comparing actual costs to updated cost estimates.
- 3. The Construction Manager shall perform the Work in general accordance with the most recent schedules submitted to the Owner. The schedule shall be updated regularly and in advance of periodic Project meetings with the Owner and Owner's Engineer. Such schedules shall be posted at the Project meetings in a convenient location for review and approval by the Owner.
- 4. The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Engineer and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Engineer may require. Any failure by Construction Manager to report known deviations or noncompliance will result in a waiver of any associated claims by the Construction Manager and shall require the Construction Manager to indemnify and hold the Owner harmless for any costs associated with the Construction Manager's failure in this regard.

3.05 *Certifications*

If applicable and upon the Owner's written request, the Construction Manager shall obtain from its Consultants and Subcontractors, and furnish to the Owner, certifications with respect to the documents and services provided by Construction Manager's Consultants and Subcontractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Contract Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and Owner's Engineer shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications.

3.06 *Construction Manager's Submittals*

- A.** Prior to submission of any Submittals, the Construction Manager shall prepare a Submittal schedule, and shall submit the schedule for the Owner's and Owner's Engineer's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Engineer's schedule provided in this Section, (2) allow the Owner and Owner's Engineer reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Construction Manager fails to submit a Submittal schedule, the Construction Manager shall not be entitled to any increase in Contract Price or extension of Contract Time based on the time required for review of Submittals.

- B.** By providing Submittals the Construction Manager represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.
- C.** The Construction Manager shall perform no portion of the Work for which the Contract Documents require Submittals until the Owner and Owner's Engineer have approved the respective Submittal.
- D.** The Work shall be in accordance with approved Submittals. Work done in compliance of an approved Submittal does not relieve the Construction Manager of its responsibility to perform the Work consistent with the requirements of the Contract Documents and the design intent if the Work subject to an approved Submittal fails or is deemed defective by the Owner or Owner's Engineer. The Work may deviate from the Contract Documents only if the Construction Manager has notified the Owner and Owner's Engineer in writing of a deviation from the Contract Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Submittals or by the Owner's or Owner's Engineer's approval of the Submittals.
- E.** Any professional design services or certifications to be provided by the Construction Manager, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and Owner's Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

ARTICLE 4 - CHANGES IN THE WORK

4.01 *General*

A Change Order or Change Directive may accomplish a change or Modification in the Work after execution of the Contract, and without invalidating the Contract, subject to the limitations stated in the General Conditions. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

5.01 *General*

The Owner's responsibilities shall be governed in accordance with the General Conditions.

ARTICLE 6 - CONTRACT TIME AND COMPLETION

6.01 *Contract Time*

The Construction Manager's obligations with respect to the Contract Time shall be governed in accordance with the General Conditions, unless otherwise stated in this Article.

- A. Time limits stated in the Contract Documents are of the essence of the Contract. In all aspects of the Work, time is of the essence of the Contract. Additionally, time limits stated in the Project Schedule are of the essence. By executing the Guaranteed Maximum Price Amendment, the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.
- B. The Construction Manager shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Construction Manager's failure to obtain insurance required under this Contract.
- C. The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- D. The date of commencement of the Work shall be stated in a Notice to Proceed issued by the Owner. The date of commencement, as that term is used in the Contract Documents, shall mean the commencement of the Construction Phase which will be evidenced by the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.
- E. The Contract Time shall be measured from the date of commencement.
- F. **Substantial Completion.** The Construction Manager shall achieve Substantial Completion of the entire Work not later than [DATE], subject to and adjustments of this Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between Owner and Construction Manager that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.
- G. Each phase of construction identified in a separate GMP Amendment shall include the date of Substantial Completion of the Work for that phase. All provisions of this Article 6 shall apply to each phase and the Project as a whole.

6.02 *Delays and Extensions of Time*

Unless otherwise set forth in this Section, Project delays shall be governed in accordance with the General Conditions.

- A.** Claims relating to time shall be made in accordance with applicable provisions of Article 12 of the General Conditions.
- B.** This Section 8.02 does not preclude recovery of damages for delay by Owner under other provisions of the Contract Documents.
- C.** Should the Construction Manager default on its obligations to make progress and complete the Work on time, as allowed in the Contract Documents, the Owner may withhold or deduct all costs and damages for compensable delay caused by the Construction Manager from the Contract Price. Such costs shall include any attorney's fees, and all other costs, expenses, and damages actually incurred by the Owner as a result of such delay. Owner's delay damages, may be incidental to and not directly associated with the Project.
- D.** The Construction Manager shall receive no financial compensation for delay or hindrance of the Work. In no event shall the Owner be liable to the Construction Manager for any damages arising out of or associated with any delay or hindrance to the Work, unless caused by the Owner's active interference with the Construction Manager's prosecution of the Work. For all such other events of delay, the Construction Manager's sole remedy for delay or hindrance shall be an extension of time, provided the delay must be beyond the control and without the fault of negligence of the Construction Manager.
- E.** The procedure for the determination of time extensions for unusually severe weather is as follows and is subject to the terms of this section and the General Conditions. In order for the Owner to award a time extension under this clause, the following conditions must be satisfied.
 - 1.** The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month.
 - 2.** The unusually severe weather must actually cause a delay to the completion of the Project and such delay must be shown by the Construction Manager to impact the critical path and not be subject to concurrent delay caused by other events.
- F.** The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location and will constitute the base line for monthly weather time evaluations. The Construction Manager's activity durations provided in the progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK**

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
(5)	(4)	(5)	(4)	(5)	(5)	(4)	(3)	(5)	(5)	(4)	(4)

G. For the duration of the Contract, the Construction Manager shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. Delay from adverse weather shall not constitute an adverse weather delay day unless Work on the overall Project's critical activities is prevented for 50 percent or more of the Construction Manager's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceed the number of days for that month as referenced above, the Owner upon notification by the Construction Manager, will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and a modification shall be issued in accordance with the Contract.

6.03 *Liquidated Damages*

A. Construction Manager and Owner recognize that time is of the essence as stated in Paragraph 6.01 above and that Owner will suffer financial and other losses if the Work is not completed and milestones or phases are not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expenses, and damages suffered by the Owner are inherently difficult to ascertain and therefore agree that in lieu of having to prove with factual certainty at the time of any legal proceeding the actual loss suffered by Owner if the Work is not completed on time, that the following provisions concerning recovery of liquidated damages for delay shall control. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

Substantial Completion: If Substantial Completion of the entire Project has not been achieved on or before the completion date in section 6.01(F), and such time as may be added by properly executed Change Order or Modification, then Contractor shall pay to Owner the following liquidated damages:

- \$1200 per day for each day until Substantial Completion is achieved.

In the event of delay in the completion of any phase of the Project required to be complete by the Contract Time and/or substantial completion date identified in that phase's GMP Amendment, and upon demonstration by Owner of a realized impact to the overall Project Schedule, then the Construction Manager shall pay to the Owner the sum of \$1200 for each day of delay to the completion of that phase.

If Final Completion has not been achieved on or before the Scheduled Final Completion Date, then Contractor shall pay to Owner the following liquidated damages:

- \$1200 per day for each day until Final Completion is achieved.

B. The Parties acknowledge, recognize, and agree on the following:

1. That because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Contractor's failure to complete the Work on or before the applicable Contract Time(s);
2. That any sums which would be payable under Paragraph 6.03.A are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure;
3. That any sums which would be payable herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the applicable Contract Time(s) for the above-referenced Work. Notwithstanding the above, liquidated damages are not intended to excuse Contractor from liability for any other breach of its obligations under the Contract Documents; and
4. That, in recognition of the acknowledgments above, Contractor is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages in Paragraph 6.03.A are a penalty and that they are not enforceable.

C. Owner shall have the right to deduct the liquidated damages set forth in Paragraph 6.03.A from any monies unpaid, otherwise due, or to become due, to Contractor, to demand and receive payment from Contractor of such liquidated damages, and to initiate applicable dispute resolution procedures under the General Conditions to recover such liquidated damages. The deductions of such damages from any monies unpaid, otherwise due, or to become due shall be in addition to retainage under the Contract Documents. Owner has the discretion to allow liquidated damages to accrue without collecting and by doing so does not waive any rights to collect them at a later time.

ARTICLE 7 – CONTRACT PRICE

7.01 *General*

Owner shall pay Construction Manager in accordance with the General Conditions a Contract Price equal to Construction Manager's Fee (as defined in this Article) plus the Cost of the Work (as defined in this Article), subject to the GMP established in Section 9.05 hereof and any adjustments made in accordance with the General Conditions.

7.02 *Construction Manager's Fee*

A. Construction Manager's Fee shall be _____ percent (____%) of the Cost of the Work as defined in Section 7.03, and as adjusted in accordance with Section 7.02.B below, and less any applicable discounts, rebates, refunds and other amounts received from the sale of surplus materials and equipment. Such Fee shall not be earned with

respect to Construction Manager's in-house personnel Soft Costs and travelling and lodging expenses and bonding and insurance cost as set forth in the Proposal of Construction Manager attached hereto. Such Soft Costs include (i) project manager, (ii) accounting personnel and services, (iii) construction supervisor, (iv) travel and out-of-office living expenses, including airfare, lodging, food, ground transportation, (v) insurance premiums and related expenses, and (vi) bonding costs.

B. Construction Manager's Fee will be adjusted as follows for any Change Orders approved by Owner:

1. For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Construction Manager shall receive a Fee of _____ percent (____%) of the additional Costs of the Work incurred for that Change Order, exclusive of Construction Manager's Soft Costs as defined in Section 7.02.A.
2. For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, Construction Manager shall receive no fee on that portion of the Cost of Work that is eliminated by any deductive Change Order.

C. Amounts due for self-performed work shall include in the Cost of the Work a lump-sum cost for work competitively bid and awarded in accordance with the terms of this Agreement that will not be marked up for the Construction Manager's Fee as provided in this section. For such scopes, the Construction Manager may not exceed five percent (5%) overhead and five percent (5%) profit in the lump sum amount.

D. For any self-performance of minor work that is not subject to competitive bidding, section Section 7.03 will control.

7.03 *Cost of the Work*

The term Cost of the Work shall mean costs reasonably incurred by Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the following:

- A. Fees for direct employees of Construction Manager performing the Work at the Site or, with Owner's agreement, at locations off the Site, calculated on the basis of those rates set forth on Exhibit 1 to this Agreement, or, if no such rate is set forth on Exhibit 1, at prevailing rates for such personnel.
- B. Fees for Construction Manager's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work at the rates set forth on Exhibit 1 to this Agreement, or, if no such rate is set forth on Exhibit 1, at prevailing rates for such personnel.
- C. Fees for Construction Manager's personnel stationed at Construction Manager's principal offices, but only to the extent said personnel are identified in Exhibit 1 and

performing the function set forth in said Exhibit and compensated in accordance with the rates set forth on Exhibit 1, or if no such rate is set forth on Exhibit 1, at prevailing rates for such personnel.

- D. The reasonable portion of the cost of travel, accommodations and meals for Construction Manager's personnel necessarily and directly incurred in connection with the performance of the Work.
- E. Payments properly made by Construction Manager to Subcontractors for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors.
- F. Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
- G. Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Construction Manager, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items. Costs for items not fully consumed by the Construction Manager shall mean fair market value. The actual cost of such excess materials as was originally billed to Owner shall be credited to the Owner as a deduction from the Cost of the Work.
- H. Costs of removal of debris and waste from the Site.
- I. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- J. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Construction Manager at the Site, whether rented from Construction Manager or others, and incurred in the performance of the Work. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- K. Premiums for insurance and bonds required by this Agreement or the performance of the Work.
- L. All fuel and utility costs incurred in the performance of the Work.
- M. Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work. Provided that if the Owner is exempt from such taxes and provides a tax exemption

certificate or certificates to Construction Manager that effect, no such taxes shall apply. The Construction Manager shall use that certificate to exempt any purchases made for the Work from otherwise applicable taxes. As such, the Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager which are exempted because of the Owner's tax exempt status. Subject to the above terms, the Construction Manager shall pay sales, consumer, use and similar taxes that are legally enacted, whether yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

- N. Costs for permits, royalties, licenses, tests and inspections incurred by Construction Manager as a requirement of the Contract Documents.
- O. Deposits which are lost, except to the extent caused by Construction Manager's negligence or default under this Agreement.
- P. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property, except to the extent caused by Construction Manager or anyone performing Work on its behalf.
- R. Accounting and data processing costs related to the Work.
- S. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
- T. Costs incurred by Construction Manager to provide the payment and performance bonds, warranties and guarantees with respect to the Work as provided herein.
- U. Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits, such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section 7.03, and provided that such costs are directly attributable to work performed on this Project only and provided further that such costs do not exceed twenty-five percent (25%) of such wages and salaries.
- V. Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 14.03 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.03.

7.04 Non-Reimbursable Costs

The following shall be excluded from the Cost of the Work:

- A. Compensation for Construction Manager's personnel stationed at Construction Manager's principal or branch offices, except as provided for in Sections 7.03.A, 7.03.B and 7.03.C hereof.

- B. Overhead and general expenses, except as provided for in Section 7.03 hereof, or which may be recoverable for changes to the Work.
- C. The cost of Construction Manager's capital used in the performance of the Work.
- D. If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.
- E. Any and all costs incurred by Construction Manager, including but not limited to costs for project management and costs to comply with the General Conditions, to the extent that such costs would cause the GMP to be exceeded.
- F. Costs for services incurred during the Preconstruction Phase.
- G. Construction Manager's fee on all self-performed scopes of work competitively bid and awarded to the Construction Manager.

7.05 *The Guaranteed Maximum Price ("GMP")*

A. GMP Established upon Execution of this Agreement

Construction Manager guarantees that the total charge to Owner for completion of all Work shall not exceed the cumulative total GMP for each phase of work and that such total shall not exceed the Project budget as stated in the GMP Amendment(s). The Construction Manager acknowledges and agrees that in no event will the GMP exceed the Project estimate and the Construction Manager accepts the obligation of budgetary control and monitoring to ensure that the total sum GMP of any and all phases does not exceed the Project Budget. Additional detail regarding the GMP is included in Exhibit 1 ("GMP Exhibit"). Construction Manager agrees that it will be responsible for paying or absorbing all costs of completing the Work which exceed the GMP, as said GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth herein.

B. It is the intent of the parties that the GMP will be increased or decreased by any additive or deductive Change Orders that change the scope of the Work with commensurate changes to the Cost of Work in accordance with Article 4.

7.06 *Owner Contingency*

A. The Owner Contingency will be used by Owner to fund items that would otherwise be subject to a Change Order. If the Owner Contingency is totally depleted, the Owner will fund these items, or replenish the Owner Contingency, by increasing the GMP by Change Order in accordance with the General Conditions. Neither Owner nor Contractor's rights or obligations under the Contract Documents shall be affected by the Owner Contingency.

B. For the avoidance of doubt, for all items covered by the Owner Contingency, Contractor shall be obligated to comply with all of the requirements set forth in the General Conditions, with respect to the item that forms the basis for the Change Order.

- C. Any unused amounts of the Owner Contingency shall be reflected in a Change Order that increases or decreases the GMP by such amounts, with the understanding that Contractor shall not be entitled to share in any savings on this contingency.

7.07 *Project Contingency*

- A. The Initial GMP and subsequent GMPs include a project contingency line item (“Project Contingency”). The Project Contingency is available for Contractor’s exclusive use for unanticipated Costs of the Work that it has incurred that are not the basis for a Change Order under the Contract Documents, plus the applicable Contractor’s Fee. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of labor and material costs; (d) correction of defective, damaged or nonconforming Work; (e) Subcontractor defaults; and (f) deductibles incurred by Contractor under the insurance required under the Contract Documents (but not to exceed \$25,000 per occurrence). The Project Contingency is not available to Owner for any reason, including, but not limited to, changes in scope or any other item which would enable Contractor to increase the GMP under the Contract Documents.
- B. Contractor may draw upon the Project Contingency by making a written request to Owner, identifying the reason and amount of the draw, and by obtaining Owner’s written approval, which shall not be unreasonably withheld. If Owner approves a draw against the Project Contingency, Contractor shall, in its Applications for Payment, show an increase in the relevant line item by the amount drawn and a decrease in the line item for the Project Contingency.
- C. Contractor agrees that with respect to any expenditure from the Project Contingency relating to a Subcontractor default for which insurance or bond may provide reimbursement, Contractor will in good faith exercise reasonable steps to obtain performance from the Subcontractor or recovery from any surety or insurance. If Contractor is subsequently reimbursed for said costs, then said recovery will be credited back to the Project Contingency, net of any reasonable costs and expenses incurred by Contractor in pursuing such recovery.

7.08 *Project Savings*

In the event of any “buy out” transactions, agreements by the Construction Manager with a subcontractor for the subcontractor’s cost of its portion of the Work, or other savings due to early completion or value engineering after execution of the Guaranteed Maximum Price addendum, then such savings shall be shared with the Owner in the following percentages: 80% to Owner, 20% to Construction Manager. Said savings shall be memorialized by appropriate change order. Documentation regarding such “buy out” transactions/agreements shall be subject to the Owner’s audit and inspection rights set forth in the General Conditions.

ARTICLE 8 - COMPENSATION AND PROGRESS PAYMENTS

8.01 *General*

Payments to Construction Manager are governed in accordance with this Article and the General Conditions.

- A. Construction Manager shall submit to Owner on the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Construction Manager's Application for Payment in accordance with the General Conditions.
- B. Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with the General Conditions, but in each case less the total of payments previously made, and less amounts properly withheld under the General Conditions.
- C. If Construction Manager's Fee under Section 7.02.A hereof is a fixed amount, the amount of Construction Manager's Fee to be included in Construction Manager's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Construction Manager's Fee.
- D. All payments to Construction Manager exclusive of those made directly by Owner to any vendor to Construction Manager will be made by electronic transfer to Construction Manager's bank account. Construction Manager shall promptly provide Owner with wire transfer instructions for the making of such wire transfers to Construction Manager's bank account.

8.02 Retainage on Progress Payments

Owner will retain five percent (5%) of each Application for Payment. Upon Final Completion of the Work, the retainage shall be reduced in accordance with the Guaranteed Maximum Price Amendment.

8.03 Interest

Timeliness and interest due or payments to the Construction Manager are subject to and controlled by Chapter 2251 of the Texas Government Code.

8.04 Compensation for Work Performed Prior To Execution of Guaranteed Maximum Price Amendment

- A. Unless otherwise agreed, payments for Work performed prior to Execution of the Guaranteed Maximum Price Amendment shall be made monthly. For the Construction Manager's performance of Work prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall compensate the Construction Manager as follows:
- B. Preconstruction services provided prior to execution of the Guaranteed Maximum Price Amendment will be compensated by the Owner in accordance with Sections 7.02 and 8.05 herein. However, should this Agreement be terminated prior to the construction phase, Construction Manager shall be entitled to _____ Dollars (\$_____) as a fee in full and final satisfaction of all costs, claims, and rights to payment for the Project.

C. Compensation for Reimbursable Expenses Prior To Execution of Guaranteed Maximum Price Amendment

1. Reimbursable Expenses are in addition to compensation set forth in Section 8.04.A and 8.04.B and include expenses, directly related to the Project, incurred by the Construction Manager as follows:
 - a. Transportation and authorized out-of-town travel and subsistence;
 - b. Fees paid for securing approval of authorities having jurisdiction over the Project;
 - c. Postage, handling and delivery; and
 - d. Other Project-related expenditures, if authorized in advance by the Owner in writing.

D. Payments to the Construction Manager Prior To Execution of Guaranteed Maximum Price Amendment.

1. Subject to the timeliness and interest provisions in the Government Code Chapter 2251, payments are due and payable to Construction Manager thirty-days following the certification of an application for payment by the Owner's Engineer.
2. Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be provided to the Owner with each application for payment or invoice on which any charges for reimbursable expenses appears. Further, Construction Manager shall maintain, at its office, a complete record of all costs and accounting data generated in relation to Reimbursable Expenses and services performed for a period of five years following execution of the Guaranteed Maximum Price Amendment or termination of this Agreement, whichever occurs first. Upon request of Owner, and within a reasonable time following such request, Construction Manager will make available for inspection and duplication all records required to be maintained by this section or elsewhere in the Contract Documents.

E. If the Owner terminates the Contract after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 8.04.B:

1. take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 7.02; and

3. subtract the aggregate of previous payments made by the Owner for Construction Phase services.

8.05 *Contract Price and Payment for Work Performed After Execution of Guaranteed Maximum Price Amendment*

- A. For the Construction Manager's performance of the Work after execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager the Contract Price in current funds as agreed Section 7.02 herein and in the Guaranteed Maximum Price Amendment. Notwithstanding any terms to the contrary, the provisions of this Article and the General Conditions shall control the obligations of the Parties with respect to payments made pursuant to the Contract Documents.
- B. All payments made for any phase of the Work for which a GMP Amendment has been executed shall be governed by the provisions of Article 7 and any other payment provisions contained in the Contract Documents.
- C. Should this Agreement be terminated after execution of the Guaranteed Maximum Price Amendment, Construction Manager shall be compensated in accordance with the terms contained in the General Conditions.

8.06 *Construction Trust Funds*

Construction Manager shall comply with the provisions of the Texas Trust Fund Act, Chapter 162 of the Texas Property Code. With respect to payments made by the Owner, such funds are considered Trust Funds and shall be safeguarded and used as represented by Construction Manager to pay any consultants and subcontractors that may be due payment pursuant to the schedule of values.

ARTICLE 9 - PAYMENT APPLICATIONS

9.01 After execution of the Guaranteed Maximum Price Amendment this Article shall be governed by the General Conditions unless specified otherwise herein. To the extent there is a conflict between the terms of this Agreement and the terms of the General Conditions, this Agreement shall prevail.

9.02 *Contract Price*

The Contract Price is stated in the Guaranteed Maximum Price Amendment.

9.03 *Applications for Payment*

Applications for Payment shall be governed in accordance with the General Conditions.

9.04 *Progress Payments*

Progress Payments shall be governed in accordance with the General Conditions.

- A. After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time limits required by the General Conditions.

B. The Construction Manager shall pay each consultant, subcontractor, and other person or entity providing services or work for the Construction Manager no later than the time period required by the General Conditions.

9.06 *Failure of Payment*

Failure of payment by Owner within the time limits required by the General Conditions shall entitle the Construction Manager to the remedies contained in Article 16 of the General Conditions.

ARTICLE 10 - FINAL COMPLETION

10.01 Final completion shall be governed in accordance with the General Conditions, except as otherwise set forth in this Article.

A. Timely final completion is an essential condition of this contract. Construction Manager agrees to achieve final completion of the Work within 30 days of the designated or extended substantial completion date. The date of Substantial Completion shall be fixed by this Agreement, unless modified by Change Order, and memorialized by a Certificate of Substantial Completion as provided in the General Conditions.

10.02 The Agreement shall not have been fully performed until all Work required by the Contract Documents has been performed and the Construction Manager provides the following to the Owner:

- A. record or as-built drawings executed or complete in both “.dwg” and “.tiff” formats;
- B. executed or complete certificates of documents evidencing warranties and owner-operators manuals;
- C. all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the Contract Documents;
- D. insuring agreements and bonds covering all periods of construction and any subsequent periods required under the Contract Documents;
- E. lien releases and signed affidavits of final payment from all Subcontractors and Suppliers; and
- F. one copy of each item in this section in electronic format.

ARTICLE 11 - OWNERSHIP OF WORK PRODUCT, COPYRIGHTS AND LICENSES

11.01 Ownership of work product, copyrights and licenses, if applicable, shall be governed in accordance with the General Conditions.

ARTICLE 12- CLAIMS AND DISPUTE RESOLUTION

12.01 General Claims and dispute resolution will be governed in accordance with the General Conditions.

ARTICLE 13 - BONDS AND INSURANCE

13.01 *Insurance*

Construction Manager and Owner shall procure the insurance coverages in accordance with Article 6 of the General Conditions and Exhibit A to the General Conditions.

13.02 *Bonds and Other Performance Security*

In accordance with Article 6 of the General Conditions and Texas Government Code chapter 2253, Construction Manager shall provide a performance bond and a labor and material payment bonds.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.01 *Governing Law*

The Contract shall be governed by the law of the state of Texas.

14.02 *Venue*

This Agreement is entered into and performed in Comal County, Texas, and the Construction Manager and the Owner agree that mandatory venue for any legal action related to this contract shall be in the District Courts of Comal County, Texas.

14.03 *Successors and Assigns*

The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract in whole or in part without the express written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and the attempted assignment shall be of no legal force or effect as to the other party.

14.04 *Written Notice*

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice sent or transmitted by electronic mail or facsimile must be actually received to be considered delivered and to comply with notice requirements herein. Transmission alone by electronic mail or facsimile does not constitute delivery.

14.05 *Rights and Remedies*

- A.** Duties and obligations imposed by the Contract Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- B.** No action or failure to act by the Owner or Construction Manager shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

14.06 *Interpretation*

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

14.07 *Severability (Savings)*

The invalidity of any part or portions of the Contract Documents therein shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents. Furthermore, to the extent applicable law renders void or otherwise restricts the enforceability of any provision of this Agreement or in any of the other Contract Documents, such provision is hereby modified to the extent necessary (and no more) to conform to the restrictions imposed by such applicable law.

14.08 *Prohibition on Contracts with Companies Boycotting Israel*

- A.** The Contractor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. [USE IN LIEU OF THE PREVIOUS SENTENCE IF THE CONTRACTOR IS EXEMPT FROM THE ISRAEL BOYCOTT REQUIREMENT—The Contractor hereby declares that it is exempt from Chapter 2271 of the Texas Government Code, as amended.] The foregoing verification is made solely to comply with Chapter 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

14.09 *Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited*

A. The Contractor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

B. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes the Contractor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

14.10 *Texas Public Information Act*

A. The Contractor recognizes that this Project is publicly owned, and the Owner is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights.

B. This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of NBU (the Owner).

C. The Contractor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement; (2) promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the Construction Manager on request of the Owner; and (3) on completion of the Agreement, either:

- provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the Contractor; or
- preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.

D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the

Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

14.11 *Exhibits.* The following exhibits (“Exhibits”) are specifically made part of, and incorporated by reference into, this Agreement:

Exhibit 1	Guaranteed Maximum Price Exhibit
Exhibit 2	Contractor’s Preconstruction Services
Exhibit 3	List of Key Personnel
Exhibit 4	Contractor’s Compensation
Exhibit 5	Elements of the GMP
Exhibit 6	Form of Security Bond
Exhibit 7	Form of Performance Bond
Exhibit 8	Form of Payment Bond
Exhibit 9	Prevailing Wage Rates

This Agreement is entered into as of the day and year written above (“The Date of Execution”).

CITY OF NEW BRAUNFELS, TEXAS

[Construction Manager]

OWNER

CONSTRUCTION MANAGER

By: _____

By: _____

Title: _____

Title: _____

Exhibit 1 – Guaranteed Maximum Price Exhibit

In entering into this Agreement with a Guaranteed Maximum Price, it is the understanding of the parties that Owner is relying on the construction expertise of Construction Manager to provide preconstruction consultation and construct the Project.

The form of the Guaranteed Maximum Price Exhibit is included in the Request for Proposal Package provided to all Respondents and shall become Exhibit 1 to this Agreement upon its execution.

ATTACHMENT 7
GUARANTEED MAXIMUM PRICE AMENDMENT
TO THE
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER-AT-RISK

This Guaranteed Maximum Price Amendment to the Standard Form of Agreement Between Owner and Construction Manager At-Risk (the “Amendment”) is entered into by and between the City of New Braunfels, Texas (“Owner”) and _____ (“Construction Manager”) for the construction of the **Zipp Family Sports Complex**. This Amendment amends the one certain Standard Form of Agreement Between the Owner and Construction Manager At-Risk (the “Agreement”) entered into by and between the City of New Braunfels, Texas and _____, dated _____, and establishes a Guaranteed Maximum Price (“GMP”) for construction and time for completion of construction as set forth below:

RECITALS

WHEREAS, Owner and Construction Manager entered into the Agreement dated as of _____, for the construction of the **Sports Fields Complex Project**; and

WHEREAS, unless clearly provided otherwise herein, all terms and phrases used herein shall have the same meaning as the terms and phrases used in the Agreement; and

WHEREAS, Section 2.04 of the Agreement contemplates the delivery of a Construction Manager’s GMP Proposal to Owner; and

WHEREAS, Section 2.04 of the Agreement requires that said proposal contain certain representations and documentation; and

WHEREAS, Section 2.04 of the Agreement provides that in the event Owner timely accepts the Construction Manager’s GMP Proposal, this Amendment shall be executed; and

WHEREAS, _____ has delivered a Construction Manager’s GMP Proposal to Owner; and

WHEREAS, Owner desires to accept the Construction Manager’s GMP Proposal, subject to any amendments or revisions as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and _____ agree to modify and amend the Agreement as follows:

1. _____ acknowledges that this Amendment does not modify the original Project scope, budget, and time for completion set forth in the original Agreement.

2. To expedite the Project schedule, _____ and Owner have agreed to allow _____ to perform the Work as set forth in the Contract Documents. _____ acknowledges that the scope of Work covered by this Amendment includes all Work [for Phase _____] of the Project as included in the overall scope of Work of the original Agreement.

3. _____ acknowledges that this Amendment is for [Phase _____ of] the Project, and includes the costs for the payment bond, performance bond, insurance, general and administrative costs (G&A).

4. Owner hereby accepts the Construction Manager's GMP Proposal [for Phase _____] submitted by Construction Manager, dated _____, ___, a true and complete copy of which is attached hereto and incorporated herein by reference, marked as Exhibit "1-A".

6. Construction Manager's GMP for the Cost of the Work [for Phase _____] is _____ dollars (\$_____), subject to additions and deductions by Change Order as provided in the Contract Documents as agreed by Owner and Construction Manager. The GMP [for Phase _____] is an amount that the Cost of the Work shall not exceed and is based on and detailed in the attached Exhibit "1-A".

7. The Construction Manager's Fee for the Construction of the Work is hereby established in the sum of _____ dollars (\$_____), based on the product of ___% multiplied by the Cost of the Work, and said sum is included within the above stated GMP.

8. All costs and expenses for those General Conditions, identified by Construction Manager in its response to the RFP, as well as all overhead expenses and Cost of the Work for the construction are included in the above total from paragraph 6. Construction Manager acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted amount, and Construction Manager agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond this amount unless expressly adjusted by a Change Order.

9. Owner has established an Owner's Contingency fund in the sum of _____ dollars (\$_____) for this Project. Construction Manager has no right or entitlement to the Owner's Contingency fund and use of such funds are subject to the prior written approval and issuance of a Change Order by Owner. Should any contingency funds be required for use on the Project, the parties must enter into a written Change Order allocating that portion of the contingency to the Project for specific identified items. Failure to obtain a fully executed Change Order allocating contingency shall waive any rights Construction Manager may have to said funds. Should Construction Manager perform work for which it seeks funds in excess of the GMP but within the Owner's identified Project contingency, then Construction Manager does so at its own risk of cost and the GMP shall not be adjusted upwards.

10. Pursuant to the terms of the Agreement, the Project (or the specific phase identified therein and to which this Amendment applies) will be substantially complete by _____.

11. Except as modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Manager agree that the terms of this Amendment shall take precedence.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the ____ day of
_____, 20___.

OWNER:

CITY OF NEW BRAUNFELS

By: _____

Name: Robert Camareno

Title: City Manager

CONSTRUCTION MANGER-AT-RISK:

Name: _____

Title: _____

Exhibit “1-A” – Construction Manager’s GMP Proposal